### Ler Maneridzum:

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### LAW and CUSTOMS

## ENGLAND,

Relating to MANORS and LORDS of MANORS, their Stewards, Deputies, Tenants, and others,

#### VIZ.

lons Goods, Waifs, Estrays, Wrecks, and Goods of Felo de se.

Of the Privileges of their Tenants in ancient Demesne; and of Widow's Free-Bench, &c.

Of Copyhold Estates, Courts-Leet, Courts-Baron, and By-Laws there made, and of Americaments, Fines and Heriots, and how to be recovered.

Of the Lords Right to Deodands, Fe-Of Surrenders and Admittances to Copyholds, and of Entailing them, and of Barring and Discontinuing such Entails by Fines and Recoveries in the Lord's Court, and by other Methods.

Of Leases made by Copyholders with Licence, and without; Also of Forfeitures and other Determinations of their Estates.

The whole being a methodical Collection of the CASES dispersed in the several Volumes of the LAW relating to Copyhold Estates, and to every Thing depending on that Tenure.

To which is added an APPENDIX of all the Modern Entries of Declarations, Pleas, Replications, Rejoinders, Demurrers, Iffues, Special Verdicts. Writs of Recordari, Certiorari, &c. relating to the faid CASES.

With proper TABLES to the Whole.

The Second Edition, with Additions.

By WILLIAM NELSON of the Middle Temple, Eig;

#### In the SAVOY:

Printed by E. and R. NUTT, and R. GOSLING (Affigns of Edward Sayer, Efq;) for Laron Ward, at the King's Arms, in Little-Britain. M DCCXXXIII.

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# PREFACE.

SINCE the greatest Part of the Lands in \* England are held by \* So held in Copy of Court-Roll, and the Trans-Kite and Quinton's mutation of Possession is made by diffection, post following from Lands held at 4 pl. 2. Common Law; it may be necessary that this Tenure should be treated of in a more particular Manner than hitherto it hath been done by any Person whatsoever.

This is now attempted in the following Book: But before I give the Reader an Account in what Manner I have proceeded, I shall mention some Things concerning Copyholds in general, and the imaginary Baseness of the Tenure, and some Absurdities relating to these Matters, which have obtained for several Ages till very lately.

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As to the Original of Copyholds, it may be difficult to trace it from any History or Law Book; but 'tis certain they are very antient, and introduced in a barbarous Age, either by Force or Consent; for when poor Men were oppressed, it was natural for them to fly to some powerful Person to protect them from those Insults and open Hostilities, of which they were continually in Danger.

7 Co. 4, 5.

And as Protection and Obedience are usually reciprocal Acts, so the People thus protected might voluntarily consent to such Terms and Usages as the Men in Power imposed on their Persons; and by this Means the greatest Part of the Services did arise, which are due to Lords of Manors from their Copyhold Tenants, and thus their Persons were Part of their Lord's Estate, and their Lands (if they had any) were held at his Will and Pleasure.

It could be for no other Reason, that so great a Number of the People of England should voluntarily invest those Lords with such Privileges as are inconsistent with the Common Liberty of Mankind, such as a Right to Demand a certain Sum of Money of their Tenants, who married without their Consent; a Right of Commanding them to cultivate their Lands, and many other

other Privileges of the like Nature; for these Copyholders were not like the Roman Slaves, adscriptos Glebæ, who could never be free without the Leave of their Lords, but they were Vassals only in respect to the Tenure of their Lands, for they might make themselves Free at any Time, by leaving their Lands to their respective Lords.

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But this was seldom or never done, and Copyhold Estates being very little regarded before the Reign of Henry the Seventh, in respect to Estates which were held at Common Law, that may be one Reason why in the old Books we have so few Cases reported concerning that Tenure.

'Tis true, our famous Lawyer Littleton, who wrote in the Reign of Edward the Fourth, bath in his first Book of Tenures a short Chapter of Copyholds; but there is very little in it material for a Lawyer, or any Body else to know; he only tells us, that Tenants by Copy of Court-Roll are those who have their Lands to them and their Heirs, in Fee, or for Life, at the Will of the Lord, according to the Custom of the Manor; and probably this Definition was the Original of that Absurdity in the Pleadings of Copyhold Cases ever since, for though it Should appear in Several Instances, that the Lands are Copyhold; yet if these Words

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Words Ad voluntatem Domini were omitted, it was always held not to be Copyhold, till the late Case of Crowther and Oldfield, in which it was adjudged, that though that Clause was left out, yet the Lands shall be taken to be Copyhold.

And this seems to be with great Reason, for 'tis very well known, that by the
Custom of the Manor, a Copyholder may
have an Estate for Life, in Fee or in Tail,
of his Copyhold Lands; and this agrees
with the Definition of Littleton beforementioned: Now since all these are certain and permanent Estates, 'tis inconsistent to say, that they are held at the Will
of the Lord, because by the Custom of the
Manor, they are become fixed Inheritances.

Besides, a Tenure ad voluntatem Domini is injurious to the King's Prerogative, because the Common Law gives him the Custody of the Person and Estates of Ideots; but where a Copyhold Estate falls to an Ideot, in such Case, this Part of the Prerogative will not be allowed, because the King cannot hold at the Will of another.

It was an Opinion among st the Lawyers in Littleton's Time, to maintain this Tenure at the Will of the Lord, That if he turned the Copyholder out of Possession, he had no Remedy, but only by Petition to him, to be restored; for if he could have

have any other Remedy, then he could not properly be said to be a Tenant at the Will of the Lord.

But this wants to be explained, for fuch Turning out of Possession must be either by Right, or by Wrong; if the first, then the Copyholder had no Reason to petition for a Restitution; neither had the Lord any Reason to grant it; but if he was wrongfully turned out, then though an Ejectment would not lie, (for fo was the Law at that Time) to recover the Possession, yet he might have an Action of Trespass against the Lord, and recover the Value of the Land in Damages, which would never have been allowed for Law, if he was only a Tenant at the Will of the Lord; and even in those Days it was held, that where a Copyholder performed his Services, he had as fixed an Estate in his Lands, as those who had a Freehold at Common Law.

And the Reason is plain, for even those Freeholds were originally held at Will till a more permanent Estate was established in them by Custom and Usage; and therefore at this Day an absolute Freehold is never pleaded, but only a Seisin in Demesse ut de seodo; and since Copybold Estates like the Antient Feuds became hereditary, one would wonder that they should still be accounted so base a A 4 Tenure

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Tenure as to be held at the Will of the Lord; especially since they stand upon the same Foundation with those Estates at Common Law; I mean upon Custom and Usage immemorial.

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Besides, it is absurd in another Respect to call Copyholds Base Estates, and to fay, that as fuch they are not efteemed in Law; because being fixed and established by Custom, they are very much favoured in Law; as for Instance; If a Copyholder perform such Services as are due from bim to the Lord, and conform bimfelf to the Customs of the Manor, he can-\*4 Rep. 21. not be \* turned out, nay be may bring a Plaint in Nature of an Assise against the Lord, and may maintain an Action of † 7 E. 4. 19. † Trespass against bim; and if such Action is brought against him, be might pray in \* Aid of the Lord; his Estate like those at Common Law is descendible to his Heir; and such Descents shall be guided by the Rules of that Law as incident to descendible Estates; and the Limitation of Uses in a Surrender of a Copyhold shall be construed by the same Rules as Limitations of Uses are by any

\* 4 Leon.

117.

As for Instance; If upon a Surrender, the Limitation of an Use is general, in such Case the Cestuy que Use bath no larger an Estate than for Life; for a Copyhold

Conveyance at Common Law.

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Copyhold Estate shall be governed by those
Rules as a necessary Consequence on the
Custom, if there is no special Custom of
the Manor to the Contrary, \* as sibi & \* 4 Rep. 29.
Suis or sibi & assignatis, or such like Words, B.
which by Custom may make a Fee-simple.

Tis true, some of these Customs are very strange, such as that which was mentioned by the Lord Chief Justice Anderson, which he knew in the Manor of Wadhurst in Sussex, where he tells us, there are two Sorts of Copyhold Tenures, Sokeland and Bondland; and the Custom is, that if the Tenant was first admitted to Sokeland, and afterwards to Bondland, and died seised of both, his Heir at Law should inherit both; and if he was first admitted to Bondland, then his youngest son should inherit both; but if he was admitted to both at the same Time, then his eldest son should inherit both.

But it would be endless to enter on a Detail of Customs, because they are Leges loci, and only known in those particular Places where they have been allowed Time out of Mind; and chiefly by the Stewards of Courts, who formerly were Barristers at Law, and no other was admitted to that Office; but are now generally Attornies, and in some Places Solicitors, who by the particular Knowledge of such Customs, have not only gotten the Reputa-

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Reputation of being eminent in the Law, but have acquired great Estates. 'Tis true, Lords of Manors, who have Lands with a Jurisdiction annexed to them, have a Right to put Officers into Places belonging to their Jurisdiction; but'tis a Right which implies the Duty of conferring them on Persons who have both Capacity and Probity Sufficient for the Discharge of the Duty of a Judge; for neither Equity, or good Sense, will ever bear that he who bath a Right to an Office, even for the private Good of particular Persons, should be at Liberty to exercise it otherwise than well; much more where 'tis for a publick Good, as the Stewards of Copyholds are; because great Part of the Lands in England (as bath been observed) are held by that Tenure; and the Stewards sit as Judges in Copyhold Cases, in the Absence of the Lord, who is seldom or never present in Court: They may determine Controversies in such Cases, redress Injuries, punish Offences by Fine, &c. and in many other Things they att as Judges: But of this you may see more under the Title Stewards; therefore I shall now proceed to mention what Books have been already published relating to Copybolds, and in what Method the following Cases are collected.

Now besides that Chapter in Littleton already mentioned, and a few Copybold Cases

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Cases put together in the fourth Report, I know no Treatise of this Nature, but a little Book said to be written by my Lord Coke himself, and one more wrote since his Time; but upon the Perusal of the one, the Reader may be induced to believe, that it was not composed by that great Lawyer; and upon Reading the other, he may believe it to be written by any Body.

In the following Book, I have proceeded in a different Method from both, by collecting all the Cases relating to Copyholds, Surrenders and Admittances, and all other Incidents and Dependencies thereon, which are dispersed in the several Volumes and Reports of the Law, from the Reign of Henry the Eighth to this Time; which I bave placed under proper Titles in an alphabetical Manner, for the Benefit of Lords of Manors and their Copyhold Tenants, and for others who may be concerned in fuch Estates: And I have added an Appendix of all the Pleadings bitherto extant in all the Books of Entries, especially in the Modern Books relating to Copyhold Estates, for the Benefit of Stewards of Manors, Attornies, and others who may have Occasion to prosecute any Suit for Fines upon Admittances, for Forfeitures, or for any other Cause whatsoever relating to Copyholds, or to any Thing depending on that Temure.

W. N.

### 7ust published. Price 2 s. 6 d.

HE Laws of England concerning the Game of Hunting, Hawking, Fishing and Fowling, &c. and of Forests, Chases, Parks, Warrens, Deer, Doves, Dove-cotes, and Conies, and all other Game in general: And also concerning, Setting-Dogs, Greyhounds, Lurchers, Nets, Tunnels, Lowbels, Guns, and all Manner of Engines and Instruments mentioned in the several Statutes to destroy the Game; shewing who are qualified by Law to keep and use them, and the Punishments of those who keep them, not being qualified. The Whole being a fummary Collection of all the Statute-Law concerning the Game, and of all the Cases, Resolutions and Judgments in the several Courts of Record at Westminster, relating thereto. Together with two Precedents of Declarations; the one in an Action of Trespass against an idle and dissolute Person for Hunting, Gc. in which the Plaintiff, if he recover, is to have full Costs; the other in an Action of Debt upon the Statute 8 Geo. for a pecuniary Penalty, forfeited by that Law, in which the Plaintiff, if he recover, is to have full Costs. By a Barrister. at Law.

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### LAW and CUSTOMS

OF

# ENGLAND

Relating to Manors and Lords of Manors, &c.

### Acceptance of Leales by Copyholders.

(A)

Cceptance is in Nature of an Agreement to an Act done, which might have been avoided, if such an Agreement had not been made.

t. Where a Copyholder accepts a Lease of his Co-1 And. 197. hold Lands, he destroys his Copyhold; as for In-S. C. Goulds, stance: The Steward of the Court granted the Co-34. S. C. pyhold Lands in Fee, afterwards the Lord of the Ma-1 Leon. 170. nor made a Lease of the same Lands to T. S. for 21 S. C. by the Years, who assigned his Term to the Copyholder: Name of Adjudged that by his Acceptance of this Lease, he Smith vershad destroyed his Copyhold, for it was his own Act Lane. to accept the Term. 2 Rep. 16, Lane's Case.

### Acceptance of Leales by Coppholoers.

2. So where Baron and Feme were joint Copy-Godb. 101, holders to them and their Heirs, which they furren-Ifa Copyholder dered to the Lord of the Manor, who in Confideratakes a Lease tion of a Sum of Money granted the same Lands to of the Manor, them and to the Survivor of them for Life, Remainbis Copybold is der to the Heirs of their two Bodies, &c. the Husband died leaving Issue; afterwards the Wife suffer'd a Cro. Eliz. 7. common Recovery, and then the Heir of the Body Forfeiture of the Husband and Wife enter'd by Virtue of the I. 7. S. P. Statute \* 11 H. 7. and it was clearly held that his \* By which Entry was lawful, because by the Acceptance of tis enacted, that if a Wo- the new Estate to them and to the Heirs of their Boman who hath dies, the Copyhold was extinguished. Cro. Eliz. 24. an Eftate for Stockbridge's Cafe. + See Hide's Cafe, cited in 4th Life, or in Rep. 31, in Frenche's Case. Tail, jointly

with her Husband, or only to her self for Life, or to her Use, in any Lands, &c. of the Inheritance or Purchase of her Husband, or given to the Husband and Wife by his Ancestors, do sell, or with a second Husband discontinue or suffer a Common Recovery by Covin, it shall be void; and he to whom the Lands ought to belong after the Death of the said Woman, may enter, &c. 11 H. 7. cap. 20. † Moor 185. S. C. by the Name of Hide ver. Newport.

> 3. The Lord of the Manor made a Lease for Life to a Copyholder, which Lease he accepted: Adjudged that his Copyhold was destroyed, especially if Livery was made by the Lord. Latch 213.

#### Acceptance of Rent and Surrenders by the Lord.

(B)

Copyholder made a Lease for Years not warranted by the Custom of the Manor, and afterwards the Lord accepted Rent of him: Adjudged † See Forfei- that this † Acceptance of Rent did not dispense with tures in gene- the Forfeiture, because upon such Forseiture the Eval. (A) S. P. state was in the very Instant of Time vested in him before any Presentment by the Homage, for that is only to give him Notice, that the Estate of the Copyholder was forfeited; besides, this being in the Case

S. P.

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of a Copyhold, the Forfeiture arises upon a Breach of a Condition in Law, which differs from those Cases where Forseitures incur upon Breaches of Conditions in Fact; as where a Lease is made upon Condition, that the Lessee shall not commit Waste; in fuch Cafe, if the Leffor accepts any Rents after Wafte is done, he dispenses with the Forseiture, but 'tis otherwise upon Conditions in Law. Godb. 47.

2. An Infant Copyholder made a Lease for Years Godb. 364. without License, and afterwards at his full Age ac- S. C. W. cepted the Rent: Adjudged this was a good Leafe a- Jones 157. gainst himself, and no Differsin of the Lord who S.C. Noy 92. might enter for the Forseiture, Laich 199. Ashfield S.C. 126.pl.3.

versus Ashfield.

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3. The Husband of a Copyholder for Life made a W. Jones Lease for a Year, excepting one Day, and so from 249. S. C. Year to Year, Oc. excepting the last Day; then he \* See the Case furrendered the Copyhold to the Lord, who made a of Underhil Lease thereof to T. S. for 40 Years: Adjudged that ver. Kelsea, his Lessee had a good Title against the Lessee of the where the Lord Copyholder; because the Lord \* accepting this Sur- was bound by render without having Notice of the Forfeiture, did the Acceptance not dispense with such Forseiture. Cro. Car. 233. of a Surrender. Matthews versus Whetton.

4. Surrender to the Use of another; afterwards at another Court, the Surrendree made another Surrender to the Use of T. P. Adjudged this shall enure as an Admittance upon the first Surrender; for by the Acceptance of the Surrender he is admitted to be Tenant. Cro. Eliz. 504 Keeping versus Bunning.

So where a Copyholder surrendered to the Use of Godb. 268. T.S. and the Lord having Notice thereof, accepted S. C. 3 Bulft. the Rent of the said T. S. this is an Admittance in 214. S. C. &

Law. 2 Cro. 403.

Where the Lord accepts a Rent of a new Tenant, fuch Acceptance is no Bar of a Relief from a former Tenant, because now by the Statute 21 H. 8. he may avow upon the Land, and is not obliged to avow upon the Person. Mod. Cases 187.

Actions brought by Copyholders. See Leases per totum.

219. S. C. Bridgm. 49.

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#### (A)

Moor 128. S. C.

HE general Words of an Act of Parlia ment, which are neither prejudicial to the Lords of Manors, nor to their Tenants, who hold by Copy of Court-Roll, do extend to Copyhold E states; but where the Tenure or Interest of the Estate t See Hardr. is altered by fuch t general Words, or where the

Rep. 433.

import any Thing to the Prejudice of the Lord either in Relation to the Customs of the Manor, of otherwise, in such Cases the general Words do no extend to Copyholds. 3 Rep. Heyden's Case, fo. 7.

32 H. S. cap. 9.

2. This may be feen in the following Cafes, a for Instance; If he, who hath a pretended Title to Copyhold, conveys it to another by a Deed of Bar gain and Sale, this is Maintenance within the \* Stall tute made against selling pretended Titles to Land and tis comprehended by these general Words Right and Title in the Statute, because it may be reasonable intended, that a Right and Title to Copyhold Land may be comprised under these Words; for the De fign of the Statute was to suppress Maintenance; an if Copyholds should not be included under the Words, then great Part of the Lands in England by ing of that Tenure, it would be no Crime to fell pretended Title to fuch Lands; which feems contrat to the Intention of the Law-makers. 4 Rep. Kite and Quinton's Cafe, fo. 25.

1 Inft. 33. a. 30. S. C. Moor 410. S. C. Cro. Eliz. 426. S. C.

3. By the Statute of Merton 'tis enacted, the S. P. 4 Rep. where Widows are kept out of their Dower, an cannot have it without Suit; in such Case if the recover the Lands of which their Husbands died feife the Defendants shall pay Damages: Adjudged the Statute extends to Copyholds. Cro. Car. 43. Shi versus Thompson.

> 4. Anno 25 Eliz. in a special Verdict in Ejectme it was adjudged, that by the Words (Any Interest Estate for Life) in the Statute 31 H. 8. that a Copyhi Estate for Life was comprehended; for the Cop holders are accounted Tenants at Will, yet they

ot simply so, but secundum consuetudinem manerii, which Custom warrants his Estate for Life; and ho' fuch an Estate is by Custom, and not by Coneyance, yet a Possession warranted by Custom is an Mate, and so accounted in Law. 1 Leon. 4.

5. A Copyholder of Inheritance made a Leafe for Years of his Copyhold Lands warranted by the Cufrom, and rendring Rent, in which Lease there was Covenant by the Leslee for himself and his Aligns to repair the Buildings; afterwards the Copyholder surrendered his Estate to another and to his Heirs; the Surrendree was admitted, and not long fter brought an Action of Covenant against the Leifee for not repairing: The Question was, whether a Surrendree was such an Assignee as is intended by the Statute \* 32 H. 8. (A) who may maintain an Action \* 32 H. 8. of Covenant; 'tis true, that Statute transfers the Pri- cap. 34. vity of Contract to an Assignee only; but yet it was adjudged, that a Surrendree is comprehended under that Word, and by Consequence might maintain an Action of Covenant. Cro. Car. 17. Plott verius Plummer.

(A) An Executor brought an Action of Debt for the Yelv. 135. Arrears of Rent due in the Life-time of his Testator, S. C. and issuing our of Copyhold Lands as well as out of Freehold; which Copyhold was held of the Manor of O, and of which the Testator died seised: It was adjudged that the Statute 32 H 8. did not extend to Rents iffuing out of Copybolds, and that Debt would not lie for the Arrears of Rent issuing out of the Freehold, unless the Executor had shewn an Attornment of the Lessee to his Testator. 1 Brownl. 102. Appleton versus Doily.

Adjudged that Copyhold Lands are within the Statute 21 Fac. of Limitations of Entry within twenty Years, 21 Jac. c. 16.

35 Car. 2. Hall's Case.

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And that they are within the Words and Intention \* 4H. 7. c. 2.

of the Statute 4 H. 7. of \* Fines and Nonclaim. Copyholder for Life surrendered to the Lord in 9 Rep. 105. a. Tail, with the Reversion in the Crown, the Lord Moor's Cafe granted a Lease for three Lives, reserving the antient 1050. Copyhold Rent, and more: Adjudged that the the Land was never demised but by Copy, yet it shall be said to be usually demised within the Statute 32 H. 8. cap. 28. and the Copyhold Rent shall be said to be the antient Rent within the same Statute.

6. Tis

6. Tis true, in the Case of † Beal and Brasier it was held, that where a Copyholder makes a Lease for Years with License, and afterwards surrenders the Reversion to the Use of another in Fee, who is admitted; yet this Surrendree is not an Assignee within that Act, because he is not privy to the Lease made by the Copyholder; but Institute Telverton, who reports this Case, tells us it was so adjudged upon the first Opening; and Justice Croke, who reports the same Case, says it was so adjudged by two Judges only.

\* 4 Mod. 80. Lev. 326. S. C. 1 Salk. 185. S. C.

7. But in the Case of \* Glover and Cope, the Court being sull, were all of Opinion, that it was a hasty Resolution in that Case of Beal and Brasser, and that it was never argued; and they all held in this last Case, that a Surrendree of a Reversion of a Copyhold Estate is an Assignee, and may bring an Action of Debt or Covenant against the Lessee within the Equity of the Statute 32 H.8 because 'tis a remedial Law, and the Lord of the Manor can have no Prejudice by such Action.

8. The Case was thus, If the Plaintiff brought an Action of Covenant letting forth, that the Lord of the Manor of Hackney had granted the Copyhold in Queltion to one who made a Leafe thereof to the Defendant, in which the Lessee covenanted to repair; afterwards the Grantee of this Copyhold Surrendered the Reversion to another, who likewise surrendered it to the Plaintiff, who brought an Action of Covenant against the Lessee for not repairing; the Defendant pleaded, that before the Reversion was furrendered to the Plaintiff, he (the Defendant) affigned his Leafe to one Pike, who entered, and was possessed, of which the Plaintiff had Notice; and upon a Demurrer to this Plea it was held, that a Surrendree is an Assignee within the Meaning of this Statute, and that Copyhold Lands are comprehended under the general Words Hereditaments, &c. and the Lord \* It was other- Chief Justice Hale was of Opinion, that these Lands

\* It was other- Chief Justice Hale was of Opinion, that these Lands wise adjudged were within the Statute \* de Donis. 3 Lev. 326 in the Case of Glover versus Cope.

Pitts ver. Hockley; for if Copyholds were within that Statute, the Lord could not then enter for a Forfeiture upon Felony committed by the Tenant; but the Donor would enter, and the Services must be done to him, and not to the Lord. Cro. Eliz. Pitts ver. Hockley. See B. pl. 1.

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9. An Innkeeper, who was a Copyholder of Inhe- W. Jones tance, became a Bankrupt: It was anjudged that his 437. S. C. opyhold Lands were within the Statutes \* 13 E- March 34. z. and 21 fac. of Bankrupts; for these Statutes \* 13 Eliz. ake all Lands, Tenements and Hereditaments liable, cap. 7. 21 thich are general Words and comprehend Copyholds; Jac. cap. 19. is true, in this Case it was adjudged, that the Innteeper's Lands were not subject to those Statutes. ut the Reason was, because he had purchased them ong before he was an Innkeeper, and no Fraud was bund in him. Cro. Car. 549. Crisp versus Prat.

10. Where Copyhold Lands come to the Lord of a Manor, by Reason of any Determination of the Estate of the Copyholder, and then the Lord inters into a Statute, and afterwards grants the same Lands by Copy of Court-Roll to another; the new Grantee of these Lands shall be liable to this tatute, because the Lands were once annexed to he Estate of the Lord, and chargeable in his Hands; put if the Copybolder himself had entered into a Statute, his Lands should not be extended, because his Estate s only at the Will of the Lord. Moor 94.

11. It was a Queltion, whether upon a forcible Entry on a Copyholder, he might be restored to his Possession within the Equity of the Statute & H. 6. the Words of which Statute are, that where a forcible Entry is found, the Justice shall cause the Lands to be reseised, and shall put the Party in full Possession; which Words are plain, that the Entry must be made on such Lands which might be refeifed, which Copyholds cannot, for a Man can be feifed of nohing but a Freehold.

But to prevent this Doubt by the Statute 21 Fac 1. ap. 15. tis enacted, that Restitution shall be made of copyhold Lands.

12. Assignees of a Reversion of Copyhold Lands 32 H. S. c. 34. hall take Advantage of Conditions and Covenants 3 Lev. 227, gainst the Lessess of such Lands, as fully as the Les- 326. fors themselves, their Heirs or Successors might have done by Virtue of the Statute.

13. To forge a Court-Roll is punishable by paying double Damages to the Party grieved, and to be fet on the Pillory, &c. being convicted upon an Action founded on the Statute & Eliz. cap. 14.

21 Jac. c. 16. 14. All Persons having a Right of Entry into Lands, must enter within twenty Years after the Title accrued; it hath been held that Copyhold Lands are within this Statute.

15. By the Statute 4 & 5 Willi. cap. 24. and 7 & 8 Willi. cap. 32. all Jurors Estates ought to be 10 l. per Annum in Freehold or Copyhold, and 5 l. per Annum

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# Aas of Parliament not extending to Co-

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A Surrender of Copyhold Lands to the Use of

fally begotten, Remainder over in Fee; the Surrendrees were admitted; the Husband died, and his Widow married again, and then her Husband and she aliened the Lands: The Question was, whether Copyholds were within the Statute \* 11 H. 7. and adjudged that they were not; because when that Statute was made, Copyholders were so little essemble in the Law, that they were accounted Villains, or in the best Acceptation, but Tenants at Will; tis true, they are within penal Statutes, which give a Forseiture in general Words, because in these Cases the Lord of the Manor may enter; but they are not within such Statutes which give a Forseiture to any particular Person; they are not within the Statute of † Partition, neither are they within the Statute de Donis: for if they were, it would alter the \* Tenure.

† 31 H. 8. of † Partition, neither are they within the Statute de Cap. 1. Donis; for if they were, it would alter the \* Tenure, 32 H. 8. cap. and by Consequence might be injurious to the Lord of the Manor; they are not within the Statute of \*Bendl. 191. ‡ Recusancy. Sid. 41, 73. Smith versus Harrington.

Poph. 33. Cro. Car. 42. See (A) pl. 6. # 29 Eliz. Cro. Eliz. S. C. reported by the Name of Suliard ver. Everard. 1 Leon. 97. S. C.

2. And as to this last Point, that they are not within the Statutes of Recusancy, this Case happened, (viz.) A Copyholder was convicted of Recusancy, and thereupon

\* 11 H, 7. cap. 30.

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ereupon a Commission being awarded to enquire his Lands; amongst the rest some Copyhold Lands re seised to pay the Forseiture of 20 1. per Month, ho by Way of Plea fuggested that the Lands were opyhold, and so prayed an Amoveas manum; the ttorney General demurred, and it was clearly addged, that these Lands were not within that Stahie, because it might be † prejudicial to the Lord same Reason the Manor, if it should be otherwise, for he not within the hight thereby lose his Customs and Services. Owen Statute 7. Edward's Cafe.

3. Neither is a Copyhold Estate barred by the # 4 H. 7. tatute of ‡ Fines and Non-claim. Noy 23. Mills cap. 24. erfus Bradley, 3 Rep. 77 (A) \* Fermer's Cale, S. P. 7 H. 7. cap. ut (B) \* Margaret Podger's Case seems otherwise.

4. By the Statute of # 12 Car. 2. 'tis enacted, # 12 Car. 2. hat the Father of a Child under the Age of twenty-one cap 24. Tears (tho' he himself is under that Age, may by his See the Plead-Last Will dispose the Custody of such Child, till he shall ings in this e twenty-one Years of Age, or for any less Term; but Case in the

+ 'Tis for the 3 Jac. T.

Appendix. Placito I.

(A) \* Fermer's Case was thus, If. A Copyholder who ad likewise other Land in the Manor of C. demised he whole to T. S. for Life, and then levied a Fine as well of the Copyhold as the Freehold, which were comprehended under these general Words, of all his Mesluages and Lands in C. and after the Fine levied he continued still in Possession; the Lessee for Life died, the five Years expired, and the Cognifee of the Fine claimed the Inheritance: Adjudged that the Lord of the Manor was not barred by this Fine, because the Makers of the Statute 4 H. 7. cap. 24. never intended that a Fine levied by a Copyholder should bar the Lord, for he hath no Title to the Inheritance. 3 Rep. 77. Fermer's Cafe.

(B) \* W. R. a Copyholder for Life, Remainder for Life, the Lord bargained and fold the Manor, and levied a Fine to I. P. who died, and it descended to Margaret Podger, who levied a Fine, and the five Years passed without any Claim, &c. It was resolved that Copyholds are within the Statute 4 H. 7. by the Word Interest, but that if the Fine be by Covin, it shall not bar the Issue. 9 Rep. 104. Margaret Podger's Case. Sce

postea Title Fines and Recoveries.

S. C. See postca 8. † He is not entitled de jure Hob. 215. in the Cafe of Cocks & Darson Hutt. 16, 17. S. P. post.pl.8.S.C. more.

\*\*2Lut.1181 it hath been \*\* adjudged that a Copyholder is not within this Statute to dispose the Custody of his Child, where there is no † Custom of the Manor so to do; for where there is no fuch Custom, then the next of Kin to whom the Land cannot descend, hath the Custody both of the Infant and his Estate; but if there is such a Custom, it shall be good against the Statute; otherwise it might be prejudicial to the Lord of the Manor. 3 Lev. 395. Clench versus Cud-

5. There is a Case wherein it was adjudged, that the Lands of a Copyholder are not included within the general Words of an Act of Parliament, which was thus, (viz.) By the Statute 12 Car. 2. the Regicides were attainted of Treason, and all their Lands, Tenements and Hereditaments, and other Things of the like Nature are given to the King without Inquisition found; a Copyholder committed Treason, and in the Year 1655, surrendered his Copyhold into the Hands of the Lord of the Manor to the Use of his Children and died; the Surrendrees were admitted, and about four Years afterwards the Manor was fold to the Plaintiff: The Question was, whether by these general Words, (viz.) And other Things of the like Nature what soever, this Copyhold was included; and three Judges against one were of Opinion that they were not, and that Copyholds are never within any Statute where the Lord of the Manor might receive any Prejudice, unless expresly named. 2 Vent. 38. the Lord Cornwallis's Cafe.

6. There was another Case adjudged upon the fame Statute, by which all Lands, Tenements and Hereditaments, which the Person attainted had on the 25th of March 1646, are forfeited to the King; and that they shall be in his actual Possession without Inquisition found; Proviso, that no Grants and Surrenders of Copyholds, &c. had or made before 29 September 1659, by any Person attainted, shall be impeached: The Question now was, whether this Proviso, wherein Copyhold Lands are expresly mentioned, adds any Force to the general Words, fo as to include fuch Lands within this Statute; and adjudged that it did not; for if it should, then the Estate being forfeited, would no longer pass by Surrender,

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it being vested in the King, would pass by his rant; and the Interest of the Lord of the Manor, ho was an innocent Person, would by this Means defeated: 'Tis true Copyhold Lands have been judged to be comprehended under the general ords of Lands, Tenements and Hereditaments, in the atute 21 Jac. made against Bankrupts; the Reason o the because Copyhold Lands are expresly mentioned in e Statute 13 Eliz. concerning Pankrupts, and that s Cudblequent Statute made Anno 21 Fac. is explanatory , that of the former: Another Reason of that Judgment rithin as, because the Lord of the Manor could not be which pured; for the Person to whom the Commissioners sign the Bankrupt's Estate must be admitted, and many a Fine to the Lord for such Admittance. Hariston the state of the Duke of York versus Sir John Marssition on the state of the Manor of B in which there were Contact the Manor of B in which there were Contact the Manor of B in which there were Contact the Manor of B in which there were Contact the Manor of B in which there were Contact the Manor of B in which there were Contact the Manor of B in which there were Contact the Manor of B in which there were Contact the Manor of B in which there were Contact the Manor of B in which there were Contact the Manor of B in which there were Contact the Manor of B in which there were Contact the Manor of B in which there were Contact the Manor of B in which there were Contact the Manor of B in which there were Contact the Manor of B in which the manor of

the in Fee of the Manor of B. in which there were Coof his syholds grantable for three Lives, paying quarterly atted, s. 8 d. and an Heriot upon the Death of every Teant, granted a Copyhold for the Lives of three perfons, referving the old Rent half yearly, but not ayable quarterly as before: Adjudged that this was not within the Statute \* 13 Eliz. and therefore the \* 13 Eliz. Opilis are this Grant, yet that did not make it void, because the antient yearly Rent was referved; and 'tis sufficient that 'tis reserved to be paid half yearly, and ot quarterly, because the Statute only mentions that prefly cent that 'tis reserved to be paid half yearly, and the the statute only mentions that the statute of statute only mentions that the statute only mentions that the statute only mentions that the statute of statute only mentions that the statute only mentions the statute only mentions the statute only mentions the statute of statute only mentions the statute o

8. The Case of Clench and Cudmore before-men-See antea 3. tioned is reported at large in Luiw. fo. 1187, who S. C. ells us these Points were debated by the Countel for the Plaintiff.

but trant the Guardianship of an Insant Copyholder in

\* Fo. 215. Cocks ver. Darfon.

Fee, without a particular Custom to enable him so to do; and it was infifted that he could not; that it was my \* Lord Hobert's Opinion, he had no fuch Power in the Case of a Lunatick; and as to this Matter there was no Difference between a Lunatick and an Infant; and 'tis resolved in Hutt. 16. & 17, that in neither of these Cases, the Lord had any Power to grant the Custody or Guardianship.

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Then it was objected, that the Custom was not well pleaded; for it was pro eo quod fecundum Confuetudinem, &c. it should have been quod infra manerium pradictum talis habetur consuetudo; for the other is no positive Allegation of the Custom, and so it was held in 3 Cro 185. Deverell versus Ratcliffe, and

Laich 134. Morgan versus Moor.

Allen 68, Purchase, S. P. after a Verdiet, and 1 Broml. 67.

Besides, it was insisted for the Plaintiff that the Freeborn ver. Cognizance was ill, for it was as Bailiff to the Infants, and also as their Guardian, when it ought to have been as Bailiff to the Guardian, because an Infant cannot choose a Bailiff.

But Judgment was given for the Defendant, (viz.) Clemson ver. That the Lord of a Manor had not Power by the Common Law to grant the Guardianship of an Infant Copyholder to another without a particular Custom for that Purpose; and that in this Case fuch a Custom was well set forth, and that the Statute did not destroy the Validity of the Cufrom, or extend to Copyhold Estates, as to this Particular; for if it did, it would make an Alteration of the Custom, which might be prejudicial to the Lord of the Manor. See antea 4. Clench versus Cudmore.

27 H. & C. 10.

\$1 H. 8. c. 1.

9. Copyhold Lands are not within the Statute 27 H.S. because the Transferring the Possession by the Operation of the Statute alone, without the Allowance of the Lord, or the Agreement of the Tenant might tend to the Prejudice of both of them,

10. Copyhold Lands cannot be extended by Elegit, for it would be prejudicial to the Lord of a Manor, if a Stranger should have an Interest in the Lands holden by Copy, without Admittance by the Lord.

11. Jointenants and Tenants of Common of any Inheritance are compellable to make Partition by Writ of Partition, as Coparceners are at Common

32 H. S. c.32. Law; and by the Statute 32 H. S. Jointenants and Lenanti Tenants of Common for Life, or for Years, may be 8 & 9 Willicompelled to make Partition; and by the Statute 8 cap. 31. 
& 9 Willi. an easier Method is provided for obtain-Antea pl. 1. 
ing such Partition; but these Statutes do not extend to Copyholds.

12. Where an Estate is made to Husband and 27 H. S. c. 10. Wife, and to his Heirs, or to the Heirs of their two Bodies, or to one of their Bodies, or to them for their Lives, or for the Life of the Wife for her Jointure; in any of these Cases she shall not have her Dower; but this Statute doth not extend to Copyhold Lands, because Dower of such Lands is war-

ranted by special Custom only.

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nds rd. any by non and 13. By the Statute 31 Eliz. no Person shall build 31 Eliz. c. 7. or convert a Building to a Cottage for Habitation, unless he lay to it sour Acres of Freehold Lands of Inheritance to be occupied with it, in Pain to sorfeit 10 l. for every Building, and 40 s. per Month for continuing it; but it hath been adjudged, that this Statute doth not extend to Copyhold Houses, and that sour Acres of Land holden by Copy for Life or Lives, or for any Number of Years, will not be sufficient to make it a lawful Cottage. I Bulst. 50. 2 Inst. 737, 738. 2 Roll. Abr. 139.

Admittance

# Admittance of one is the Admittance of another, & econtra.

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(A)

See Surrender (A) 6, 38.

Who may grant Admittances. (B)
What shall be an Admittance on a Surrender, what
not. (C)
What Interest passeth by Admittance. (D)
Where it must pursue the Surrender. (E)
Admittance on Descent. (F)
Where it must be set forth in Pleading. (G)

There are many Cases where the Admittance of one shall be taken to be the Admittance of another, as for Instance.

other; as for Instance:

1. A Copyholder of Inheritance surrendered his Lands to T. S. for Life, Remainder to E. G. and his Heirs; T. S. was admitted, and afterwards the Remainder-Man in Fee surrendered to the Use of I. R. and his Heirs; which Surrender was accepted by the Lord of the Manor, and the Surrendree was admitted to the Remainder; then T. S. the Tenant for Life died: It was adjudged, that the Admittance of the Tenant for Life was the Admittance of him in Remainder; the Reason given by Justice Croke (who reports this Case) was, because when the Lord accepted the Surrender, he admitted him to have a Remainder. Cro. Eliz. 504. Keeping versus Bunny.

2. The same Case is reported by Mr. Gouldsborough, by the Name of Keeping's Case; who tells us that the Admittance of the Tenant for Life is the Admittance of him in Remainder, but nor to be prejudicial to the Lord for his Fine; the Reason given by that Book is, because the Remainder must vest at the same Time with the particular Estate for Life; otherwise it can never vest by Law. Goulds. 95. Keep-

ing's Cafe.

3. The fame Point was adjudged in Dell and Higden's Case, (viz.) that the Admittance of Tenant for Life,

Antea fo. 3. pl. 4 S. C.

Gouldf. 95. Moor 465. S. C.

Cro. Eliz. 372. S. C. 4 Rep. 23. S. C.

#### Admittance of one is the Admittance, &c.

ife, is the Admittance of him in Remainder, beuse the Fine is entire; and when the Remainder mes into Possession, there is no new Fine due. door 358. Dell versus Higden.

4. And in Brown's Cale my Lord Coke is express, at the Admittance of the Tenant for Life is the dmittance of him in Remainder. 4 Rep. 21. Brown's

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5. The Testator devised a Copyhold Estate to T. S. r fo many Years, Remainder over; the Devisee for Years was admitted: It was adjudged, that his Admittance was the Admittance of him in the Re-

nainder. 1 Bulft. 42.

6. A Copyholder surrendered to the Use of himof for Life, then to the Use of his Wife, during e Nonage of his Son, who was then of the Age of re Years; and after his Son came to Age, then to s Use in Tail: The Father died before he was admit-, but afterwards his Widow was admitted, and he married again: Adjudged that the second Husand had an Estate during the Infancy of the Son, nd need not be admitted, because he had the same Ete to which the Wife was admitted. Didicot's Cafe. I. R. 3 Leon. 9.

7. So where a Copyholder furrendered to the Use himself and his Wife for Life, Remainder to his on in Tail, the Husband and Wife were admitted, and paid a Fine; and after their Decease, the Son tance wayed to be admitted to the Remainder, which was one accordingly; and a Fine was fet upon his Adwhen mittance, and a certain Time and Place was appointto him for the Payment thereof; and it being versus then and there demanded, he resused to pay it, insist-

ldsbo. his Father and Mother to the Estate for Life, was the \*The Remain-ls us, s the Lord brought an Ejectment, to recover the Pos-after the fron of the Estate as forfeited for not paying this Death of the the; and all this Matter being found specially, it Tenant for est at sadjudged, that no Fine was due, unless the Jury Life, surrenand a special Custom for the Remainder-Man to pay der without a-Tis true my Lord Coke tells us, that fuch an Ad- my Admittance. ittance of a Remainder-Man to a Copyhold Estate, 4 Leon. Case all not be prejudicial to the Lord in Respect of Eliz. 504.

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Life; Keep.

Hignt for Life, his (A) Fine; his Meaning must be where such i Fine is due by Custom, because it hath often been adjudged, that the Admittance of one to the particular Estate, is the Admittance of him in the Remain der; and that no Fine is due upon fuch an Admit tance, unless it be by Custom. 3 Lev. 308. Barm verfus Corke.

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1 Vent. 260. S. C. by the Name of Batmore versus Graves.

8. A Copyholder of Inheritance had three Daugh ters by his first Wife, and a Son and two Daughter by his fecond Wife, and furrendered his Copyhold to the Use of his three Daughters for Eleven Years Remainder to his two Daughters by the second Venter 1 Mod. 102, for five Years, Remainder to his three Daughters by his first Wife, Remainder to his own Heirs: Th Father died, and afterwards his three Daughters wen admitted; and before the Eleven Years were expired the Son died; the three Daughters entered and cu down some Trees; the Term of Eleven Years er pired; and in a special Verdict in Trover brought a gainst them, it was adjudged, that the Admittand of the faid three Daughters was the Admittance \* Postea (D) the Son in Reversion; and this made \* Possessio Fra tris, and by Consequence the Copyhold will descent to the two Sifters of the whole Blood to the Bro ther, and not to all his Sifters, as Heirs to the Fa ther who made the Surrender; and that the Low may affess one Fine in Respect to the particular I state, and another in Respect to the Remainder but that the last Fine may not be paid till the Estat comes into Possession. 2 Lev. 107. Blackborn versu

pl. 1, 5, 6.

Greaves.

9. The Husband furrendered to the Use of himself and his Wife for Life, and after the Decease of the Survivor, then to the Use of his Last Will, and he died Intestate, then to the Use of his own right Heirs; the Husband was admitted, and then he de vised all his real and personal Estate after his D cease to his said Wife, &c. Remainder to be divide by T. S. and F. H. between the Relations of the

<sup>(</sup>A) J. That an Admittance of a Copyholder for Li is an Admittance of him in Remainder; but not prejudice the Lord of his Fine. 4 Rep. 23. fo resolve in Fitch versus Huckley's Case. fal

aid Testator, according to the Discretion of the aid T. S. and F. H. whom he made Executors, and lied: Adjudged that the Copyhold Estate vested in hem before Admittance, because the Admittance of he Surrendree was the Admittance of them who had an Interest in Reversion. 5 Mod. 306. Warsop versus Abell.

10. A Surrender was made to the Use of T. S. in Fee, who before he was admitted to the Estate, furrendered to F. H. for Life. The Father who made the first Surrender to the Use of T. S. died, and his son and Heir was admitted, and brought an Ejectment against F. H. the Surrendree for Life: Adjudged that the Surrender made by the Father, to the Use of T.S. was of no Effect, till the Surrendree should be admitted; which being never done, his Surrender made to F. H. for Life was void; because till Admittance, he had no Estate to surrender: And tho' F. H. the Surrendree for Life was admitted, yet that shall not be an Admittance of the Surrenderor by Implication, because the Right still remains in him, till the Admittance of his Surrendree; and if so, it must descend to his Heir. Yelv. 144. Wilson versus Weddall. Latch 226. \* Cornwallis versus \* Palm. S. C.

Harwood. S. P. 11. The free Bench of a Widow of a Copyholder Postca (C) 2. ariseth out of his Estate; therefore his Admittance S. C. shall be the Admittance of her in Remainder. Hutt. 18. forden versus Stone.

#### Admittance, who may grant it.

(B)

Dmittance is the Giving Possession of a Copy-A hold Estate, and is like Induction to a Benefice; and a Court of Equity will compel a Lord of a Manor to admit a Copyholder.

1. My Lord Coke tells us, that any Person who 4 Rep. 23. hath a lawful Estate in a Manor, is Dominus pro tem- pl. 4. S. C. pore, and may grant Copyholds; as Tenant in Feesimple, or in Tail; Tenant by the Curtefy, or Te-

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nant in Dower; Tenant for Life, or for Years; Te-

nant by Elegit or Statute, or at Will.

2. And even a Lord of a Manor, who hath a wrongful and defeasable Title, may admit a Tenant either upon a Surrender or Descent; and such Admittance shall be good. 4 Rep. 24. Rous versus Archer, in Clerke and Pennifeather's Case. 1 Rep. 140. in

\* Poph. 71. \* Chudleigh's Cafe.

S. C.

Moor 112. S. C. 3 Leon. 239. 4 Leon. 9. S. P. 1 Vent. 360. S. P.

3. A Guardian in Soccage did in his own Name admit a Copyholder in Remainder for Life, and that Admittance was adjudged good, because such Guardian had a lawful Interest in the Estate. Godb. 143.

† Owen 115. + Sapland versus Ridler.

S. C.

2 Cro. 98. S. C. 4 Leon. 238. S. C. Moor 236. S. C. 2 Leon. 45. S. C. Cro. Eliz. 699. S. C. 4 Rep. 24. S. C.

4. Tenant for the Life of T. S. continued in Posfession of the Manor after the Death of the said T. S. and granted Copyholds: Adjudged that he was now Tenant at Sufferance, for he came to the Possession by a lawful Agreement of the Parties; and therefore he is Dominus pro tempore, so that he is neither Abator, Dissession or Intruder, but hath an Interest which cannot be accounted a wrongful one, and therefore such Grants and Admittances which he makes of Copyhold Estates are reputed good in Law. Onen 29. Rous's Case.

Forfeiture (B) 2. S. C. Waste (A) I. S. C.

5. Surrender to the Use of T. S. who accordingly was admitted by the Lord of the Manor: Adjudged that the Surrendree was in Possession by him who made the Surrender, and not by the Lord, because he hath only a customary Power to admit secundum formam G effectum sursum redditionis; and is therefore an Instrument only to make the Admittance. 4 Rep. 27. Tavernor versus Cromwell.

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# domittance, what shall be an Admittance upon a Surrender, and what not.

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(C)

A N Admittance upon a Surrender is where the Lord is not Proprietor, but only a necessary instrument of Conveyance to the Surrendree, for he loth not claim his Estate under the Lord, but under the Surrenderor.

I. A Surrender was made out of Court, into the 2 Cro. 403. Hands of two Copyholders, Tenants of the Manor; S. C. his Surrender must be presented, and the Surrendree 3 Bulst. 214, admitted at the next Court, and till that is done, he Heir of the Surrenderor may receive the Profits; because the Possession of a Copyhold cannot be transferred without a Surrender and an Admittance upon he Surrender; but yet if the Lord of the Manor will take Notice of the Surrender by the Acceptance of the Rent of and from the Surrendree, as if he was caully admitted, though he was not, this shall amount to an Admittance. Goldb. 268. Froswell versus Welch.

2. A Widow claimed her free Bench, and the Antea(A) 11. Steward of the Court refused to admit her; where-S. C. apon she brought an Ejectment, and held good; because if it had been necessary that she should be ctually admitted, she had done all which was in her Power to do, to obtain it, which being in the Case of a Copyhold, shall amount to an Admittance in Law. Hitt. 18. Forden versus Stone.

3. Surrender out of Court to the Use of T. S. and Poph. 127. his Heirs, which was presented at the next Court, S. C. and thus entered, s. Ad hanc curiam compertum est 3 Bulst. 237. er homagium quod R. H. sursum reddidit, &c. ad S. C. sum T. S. & haredum surum, a Copy whereof the Steward delivered to the said T. S. Adjudged that his did not amount to an Admittance; because nothing was done by which it might appear, that the Lord had consented that T. S. should be admitted, or that he should have the Land according to the Surrender. Bridgm. 81. Robinson versus Graves.

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2 Cro. 434. S. C.

\* See postca

4. The Lord of the Manor admitted T. S. habendum to him and his Wife in Tail, Remainder over: Adjudged this was a good Admittance of the \* Wife, tho' she was not named in the Premisses, but only in the Habendum, this being in the Case of a Copyhold; but 'tis not so in Feoffments. Popham 125. Brook verius Brook.

5. Surrender to T. S. and his Heirs, who died before he was admitted, and his Heir being then beyond Sea, a Friend was admitted in the Name of the Heir; and the Person thus admitted made a Lease for Years, rendring Rent; and afterwards the Heir returned and brought an Ejectment: Adjudged that the Admittance of the Friend was good, the Heir having affirmed it by bringing the Action; and that a subsequent Assent is of equal Authority with an Affent precedent. Sid. 37, 61. Blunt versus Clerke.

Court-Baron (A) 2. S. C. S. C.

6. The Lord may admit a Copyhold Tenant out of the Manor, but his Steward cannot; because as my Manors (B) 7. Lord Coke tells us, the Court must be held infra manerium; but if by Custom the Court may be held out of the Manor, then the Admittance by the Steward is good. 4 Rep. 27. Clifton versus Molineux, and 26. Melnich's Cafe.

#### Admittance, what Interest passeth before Admittance.

(D)

HE Intent of an Admittance is only to entitle the Lord of the Manor to certain Duties, fuch as Fealty, Homage, Relief, Rent and Suit # Court, Gc. therefore if he will delay or neglect to admit a Copyholder, it shall not prejudice a third \* 1 And. 192. Person; as for Instance: \* The Custom of a Mano was, that the Husband of a Copyholder of an Inhe ritance should be Tenant by the Curtefy; a Copyhol Tenement descended to a Feme Covert, her Husband entered, and had Issue, and then the Wife died be fore the was admitted: Adjudged that her Husband

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all be Tenant by the Curtefy, for \* possessio fratris \* Dyer 291. or an Entry before any Admittance hath been held 4 Rep. 21. od; itis true, the Lord cannot claim any of those S. P. uties before mentioned, unless the Copyholder is 4 Leon. mitted, but if he delays to admit the Tenant, that contra.

Antea (A) all not be prejudicial to him. Moor 371. Ever pl. S. rius Afton.

2. Adjudged that where a Copyhold of Inheri-nce descends to the Heir, he may enter before Admit-Cro. El. 148. nce, and take the Profits of the Estate, and if such Moor 272, eir dies, his Heir may do the like, and likewise 597. rown's Case. Moor 125. S.C.

3. So likewise the Heir may enter before # Admit- # 4 Rep. 23. a. So likewife the Heir may enter before 4 Admits S. C. nce, and make a Leafe according to the Cultom of Moor 596. be Manor. Poph. 138. Bullock versus Dibley.

4. And if such Lessee is turned out of Possession, See 2 Cro. 105. may bring an Ejectment to recover it, tho' his Infant (A) effor was never admitted. I Leon. 100. Rumney ver- pl. 4. S. C. is Ewers.

5. A Copyholder of Inheritance made a Lease for ears warranted by the Cultom, and afterwards ed, leaving Issue one Son and a Daughter by the rlt Venter, and a Son only by the second Wise; he eldest Son died before he was admitted; but yet was adjudged, that the Copyhold shall descend his Sifter of the whole Blood; because he himself hight have entered before Admittance, and taken he Profits, which is a sufficient \* possession fratris, so \* Antea (A) to make his Sister Heir. 1 Bulft. 42. Ayliffe versus pl. 8. bopley.

6. The same Point was adjudged in Dyer, where he Case was, that a Copyholder had Issue by two enters and died; and afterwards his eldelt Son died efore he was admitted: It was held, that his Sifter the whole Blood shall inherit; and that if the flue of both Venters had been Daughters and no on, and the eldest Sister had died before Admitnce, her collateral Heir should be inheritable. yer 291. 4 Rep. 21. S. P.

7. Surrender to the Use of T. S. but the Lord of he Manor refused to admit him without any reasonble Cause for such Refusal: Adjudged that before he admitted, he cannot enter, unleis there is a special ultom to warrant his Entry, because till Admit-

# Admittance, where it must

tance, the Surrenderor hath the lawful Poffession.

Cro. Eliz. 349. Berry verfus Green.

8. Admittance is not necessary to strengthen the Title of the Heir, but to entitle the Lord to the Fine.

## Admittance, where it must pursue the Burrender.

(E)

IS very requisite that the Admittance of a Copyholder should be made pursuant to the Surrender, because otherwise some Estate would be left in the Surrenderor; 'tis true, he may release fuch Right to the Surrendree, which will enure by Way of Extinguishment, as may be seen in the Cases following.

2: A Copyholder furrendered to the Use of her Son T. S. and his Heirs; and at the next Court T. S. and his Wife were admitted, to them and their Heirs: It was adjudged in this Case, as my Lord Coke tells \* See Antea us, that the \* Wife had no Estate, because she had none by the Surrender; and her Admittance ought to be made pursuant to the Surrender. 4 Rep. 28.

Westwick versus Wyatt.

(C) 4.

Husband and

Wife(A) 6.

S. C.

3. So where a Surrender was made out of Court to the Use of Mary the Wife of his Son Robert, without faying for what Estate; and she and her Husband were admitted, to them and the Heirs of the Husband; in this Case it was adjudged, that the Wise Mary had only an Estate for Life by the Surrender, and the Admittance must be of the like Estate and no other; therefore the Reversion still continued in the Surrenderor. 4 Rep. 29. In Bunting versus Leppenwell.

4. Surrender to the Use of T. S. and his Heirs, upon Condition, &c. the Surrendree died before Admittance, and afterwards his Daughters and Coheirs were admitted absolutely, and without any Condition; but the Surrenderor released to them all his

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Right; in this Case it was adjudged, that though the dmittance was not made pursuant to the Surrener, and so not good, yet the Release had extinguishd all the # Right of the Surrenderor; because the Surendrees were Copyhold Tenants in Possession by the ctual Admittance of them by the Lord of the Mahor, and Payment of the Fine upon fuch Admitance; and the Surrenderor having released to them Il his customary Right, that Release did enure to hem by Way of Extinguilhment, 4 Rep. 25. Kite versus Quinton.

5. The Surrender was made to the Use of T. S. Godb. 137. for ever, and he was admitted, to him and his Heirs; S. C. his is pursuant to the Surrender, for such an Admittance will give him a Fee-simple. Cro. Eliz. Pat-

ball's Case.

Surrender to the Lord of a Manor to the Use of 4 Rep. 28, 29. T.S. for Life, and the Admittance was to him and his Heirs, yet he shall have it only for Life, because

be is in by Virtue of the Surrender.

A Surrender was made out of Court to T. S. who 4 Rep. 29. lied before he was admitted, yet this Surrender may Chanc. Rep. be presented at the next Court after his Death, by 170, 171. he Custom of the Manor, and 'tis good; so if the surrenderor die before the Surrendree is admitted, yet upon Proof made of the Surrender, it may be prelented.

6. Surrender to the Use of W. R. for Life, after the Death of R. R. and his Heirs, who was then the Tepant in Possession: Adjudged this was not a Feeimple by Implication in W. R. for though it might be so in a Will, 'tis otherwise in a Surrender, for 1 Brownl. where the Lord admits in another Manner than ap- 127. Allen pointed in the Surrender, 'tis void.

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<sup>‡ &#</sup>x27;Tis generally true, that a Copyholder cannot alien his Lands by Deed, but that it must be by Surrender; but yet where a Man hath only a Right to a Copyhold as in Kite and Quinton's Case before-mentioned, he may release such Right either by Deed, or Surrender to one who is actually admitted Tenant in Possession.

## Admittance upon Descents.

(F)

A N Admittance upon a Descent is where an Heir is Tenant by Copy immediately upon the Death of his Ancestor, in which Case the Lord is likewise a meer Instrument, for the Heir may enter on the Land, take the Profits, bring Actions of Trespass, and surrender to whose Use he pleaseth before he is admitted; but he cannot be sworn of the Homage, or maintain a Plaint in Nature of an Assis in the Lord's Court, before he is compleat Tenant, and that must be upon his Admittance.

4 Lcon. 242. 5. C. 1. Where there is no Son, the eldest Daughter shall be admitted, if there is a Custom for that Purpose; but then if there is no Daughter, the eldest Sister of him who died seised of the Copyhold shall not be admitted; for she is not within the Custom, so if the Custom is, that the youngest Son shall inherit and be admitted, the youngest Brother shall not. Godb. 166. Raicliffe versus Chapman.

2. Copyholder of Inheritance died seised, leaving Issue two Daughters by several Venters; after his Death both the Daughters entered and received the Profits of the Lands many Years, and then the eldest of them died without Issue, and never was admitted; after whose Death the other Daughter was admitted to the whole as the only Daughter and Heir of her Father: Adjudged that the Possession of the eldest Daughter, tho she was never admitted, shall make her Sister of the balf Blood inheritable to the whole

\* Antea 18.

and Pennyseather's Case.

3. A Copyholder died seised of a wrongful Title which descended to his Heir, who was admitted: Adjudged that such Descent and Admittance shall not take away the Entry of the right Heir, who may enter, and that without any Admittance. 2 Gro. 26. Joyner versus Lambers. 4 Rep. 23. S. P. in the Case of Gravenor and Tedd.

Copyhold Estate. Dyer 291. 4 Rep. 23. S.P. in \* Clerke

Heir (A) placito 7. S.C. not come in and be admitted, the Lord may seise

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ousque he come and be admitted; and this he may without any particular Custom for that Purpose; it he cannot seise the Copyhold as forseited, without particular Custom, and the Lands to which he is to admitted, ought to be particularly named in the coclamations. I Lev. 63. In the Earl of Salisbury's ase.

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5. Where Custom hath made such Inheritances 4 Rep. 22, 23. at the Lands are descendable, the Descent shall be Cro. Eliz. rected according to the Rules of Common Law, as 361. cidents to every descendable Estate, and there shall a possession of fratris; but such Inheritances shall not ave any other collateral Qualities which do not oncern the Descent, and therefore they shall not be sflets to bind the Heir, nor the Wise be endowed; or shall there be a Tenancy by the Curtesy, neither hall a Descent take away the Entry, unless there are articular Customs for these Matters.

6. Where a Surrender is made to the Use of a Copy- 1 Leon. 101. older for Life, and afterwards to T. S. in Tail, Re- Case 132. nainder to the right Heirs of the Surrenderor, his ight Heir shall take by Descent and not by Purhase; but 'tis otherwise where the Surrendree hath tot an Estate for Life, or in Tail; for in such Case

is right Heir shall enter as a Purchaser.

domittance, where it must be let forth in Pleading.

(G)

MY Lord Coke tells us in the second Resolution in \* Brown's Case, that every Admittance \* 4 Rep. 2 b. mounts to a Grant, and may be pleaded as such by Antea 15. he Heir, whether upon a Descent, or a Surrender, S. C. and this is to avoid the Inconvenience of shewing he first Grant, for that may be impossible for him o do, because it might be Time out of Mind; or if he should shew it to be within Time of Memory, hen the Custom sails, for that must be immemorial.

Rep. 22. b. in Brown's Case.

2. That

2. That the Heir may alledge the Admittance of his Ancestor as a Grant, and shew that the Land descended to him, and that he entered, but need not set forth that he was admitted. 4 Rep. 22. b. in Brown's Case.

3. In Replevin, &c. the Defendant made Conufance as Bailiff of one Jane Cross, for that before the Taking the Cattle, O'c. the was feised in Fee at the Will of the Lord of the Manor of, Ge. according to the Custom of the said Manor of, and in one Messuage, which Time out of Mind had been Parcel of that Manor, and demised and demisable by Copy of Court-Roll, Oc. and so justified the Taking, Oc. Damage. feasant; there was a frivolous Replication; to which the Defendant demurred; and it was objected against this Avowry, that it was ill, because the Defendant did not alledge that Jane Cross was admitted to this Copyhold; and it was infifted, that every Copyholder in Pleading his Estate, must set forth either an Admittance, or a Grant of the Lord of the Manor, which the Court admitted to be true, where the Title comes in Question, but not where 'tis (as in this Case) an Inducement to the Action, for in Replevin the Defendant is an Actor. 2 Vent. 181. Adams versus Cross.

Amerciament in a Court-Baron, what it is, and where to be affected, where not.

#### (A)

1. A N Amerciament is called misericordia in Latin, because it ought to be affessed mercifully, and afterwards to be moderated by the Affeerment of the Equals of him who committed the Offence.

2. In the Terms of the Law, 'tis defined to be a Penalty affessed by the Equals of the Offender, either for an Offence done, as for Want of Suit of Court, or for not doing something which was appointed to be done.

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3. And yet my \* Lord Coke tells us, that an A- \* 8 Rep. 40. irciament is the Act of the Court, and that the in Griefley's feerment is the Act of the Jury; and that 'tis the Cafe. hostant Course through England, that † the Stew. † Cro. El. 748. Is (even of Courts-Baron where the Suitors are dges) assess the Amerciaments, but that such A- 3, 4. erciaments ought to be affected by the Homagers, 42. in Goddthe Lord must ‡ prescribe for it.

4. A By-Law was made at a Court, and a Penalty 3 Leon. 7.

her Court-Baron the Defendant was presented for a Bendl. 159. teach thereof, by which the said Penalty of 20 s. S. C. as forseited, but that the same ex gratia Curia illius, r quosdam T. S. & J. F. Affeerers of the said Court l hoc jurat, assess of afferat suit ad 6 s. 8 d. & c. and pon a Demurrer to the Conusance it was adjudged l, because a Pain inflicted by a By-Law to a certain Sum (as this was to 20 s.) cannot be affeered; or if it should, then the Defendant could not justify the Distress by such a By-Law, for a Pain certain ught not to be altered. Moor 75. Scarling versus riett.

5. But an Amerciament is properly a pecuniary Punishment for any Offence committed against the Lord; or is a certain Sum of Money imposed by the Steward pon the Tenant, upon the Presentment of the Homage, or the Breach of any By-Law, or for not doing Suit and Service to the Court, or for other Misdemeanors unishable in a Court-Baron; and it differeth from

\* Fine imposed, because a Fine cannot be affeered; \* Fines are nd Fines are never incident to Courts-Baron as incident to a uch, but only to some sew Manors where there are Court-Leet, courts-Leet.

and they are a

pecuniary Puishment assessed by the Steward, for an Offence or Contempt committed in Court, or by publick Officers out of Court in the Execution of their Offices; hese Fines are always assessed by the Steward, and are never affeered, and he Lord may have an Action of Debt, or distrain of common Right for hem.

6. In Courts-Baron after the Homage hath prefented the Offences, the Steward cannot amerce, unless three Affeerers are sworn to moderate the Amerciament, and then the Lord may have an Action of Debt for it, but cannot distrain without a Prescription,

7. Sa

\* 11 Rep.

Cafe S. P.

S. P. Moor 185.

S. P.

in Godfrey's

7. So where a Copyholder was presented at a Court-Baron for such an Offence, and that if he did not amend it by fuch a Time, that he should forseit such a Pain; and it was presented at the next Court, that he had not amended it, and fo had incurred the Pain: Adjudged that it need not be affeered, for there is a Difference between an Amerciament and a Pain. I Leon. 203. Caftle versus Oldman.

8. In Trespass, &c. the Defendant justified the Taking as Bailiff of the Queen, who was feifed in Fee of the Manor of H. and that it was presented by the Homage at fuch a Court held for the faid Manor, that the Plaintiff at a former Court, Oc. was amerced. 10 s. by the Steward for furcharging the Common; that the said Amerciament was affeered, &c. for which the Distress was taken, &c. and upon a Demurrer to this Plea it was adjudged, that the Amerciament by the Steward was good; but that the \* Distress taken by the Defendant was ill, because he did not set forth a Prescription to distrain for this Amerciament; 'tis true the Queen by her Prerogative 1 Brownl. 36. might distrain in such Case, but a common Person cannot distrain for an Amerciament in a Court-Baron without + prescribing so to do. Cro. Eliz. 748. Rowlstone versus Alman.

Noy 20. S.P. But 'tis otherwise for an Amerciament in a Court-Leet. + Postea (B) pl. 2. S. P.

> 9. In Trespass the Defendant justified the Taking for an Amerciament in a Court Baron, and upon a Demurrer to the Plea, the Plaintiff had Judgment: because the Desendant did not set forth, that this Amerciament was affeered. 3 Lev. 19. Coniers versus Frank.

## Amerciament in a Court-Baron, Distress for it, and Pleadings, not good.

#### (B)

I. IN Replevin, the Defendant made Conulince I for an Amerciament of the Plaintift, Or for not appearing at such a Court held for the Manor of H. Oc. the Plaintiff replied, that the Defendant took the Distress de injuria sua propria, and upon a Demurrer to this Replication the Plaintiff had Judgment, because the Defendant did not set forth in Fact, that the Plaintiff did not appear at the Court after he was summoned for that Purpose, but only that \* prasentatum fuit per homagium, that he did not ap- \* 1 Leon. pear. Cro. Eliz. 886. Parham versus Norton. See 242. S. P.

Moor 88. Lukin versus Eve contra.

2. In Replevin the Defendant prescribed to distrain pl. 10. S. P. from all Amerciaments in the Manor of, Oc. and fet forth, that the Plaintiff was presented by the Homage for not Repairing his House being a Copyhold Tenement, for which he was, at such a Court held for the said Manor, amerced by the Steward 10 s. and so justified the Taking for the said Amerciament: The Plaintiff replied de injuria sua propria, Gc. upon which they were at Issue; and it was found for the Avowant, who afterwards brought a Writ of Error, and affigned for Error, that the De- † Antea (A) fendant had not set forth any † Prescription for the pl. 8. S. P. Lord of the Manor to amerce his Tenants, and he # He may fet cannot amerce of common Right, neither can a a Fine for a ‡ Steward affels Amerciaments without a Prescrip- Contempt tion; the Judgment was reversed. I Leon. 242. without Pre-Blunt versus Whitacre,

3. Adjudged that the Beafts of a \* Stranger found \* Owen 146. on the Lands cannot be diffrained for an Amercia- S. P. Postea ment, as they may for Rents and Services. Noy 20. pl. 14.

Pell verius Towers.

4. In Replevin, Oc. the Case was, the Tenant being a Copyholder was summoned to appear at a Court-Baron to be held for the Manor of H. on such a Day, and he making Default, was amerced to 5 s. and a Distress was made for the same; but adjudged

Postea (D)

Scription.

that it was not lawfully taken; because the Americiament was affessed for not appearing at the Court, which is Suit-Service, and for such Suit the Lord cannot amerce by Law, but must distrain for it. Moor 185.

Allen versus Givers.

5. In Trespass for taking a Silver Cup, &c. the Defendant pleaded, that at a certain Court, &c. the Plaintiff was amerced to 20 s. for which the Defendant took the Cup and detained it, Ge. and upon a Demurrer to this Plea, it was adjudged for the Plaintiff, because it did not appear by the Plea at what Court he was amerced, for 'tis only faid ad quandam Curiam; now if it was at a Court Baron by Grant, then it should be coram seneschallo, if at a Court by Prescription, then it may be coram seneschallo; or coram sectatoribus Curia, or before both; befides there was another Fault in this Plea; for it did not appear, that the House, wherein the Defendant alledged the Trespass to be, was infra manerium, nor that he took the Cup infra Jurisdictionem Curia. 1 Mod. 75.

# Amerciament in a Court-Leet, Distress and Pleadings in it, good.

(C)

#### See Leet (A) 17.

1. UPON a Writ of Error to reverse an Amercement which was affeered in a CourtLeet, the Error assigned was, that the Amerciament
was unreasonable; but adjudged that after it was
affeered, it cannot be reversed for the Unreasonableness of it, for in such Case the Writ de moderata
misericordia doth not lie. I Bulft. 125. Stubbs versus
Flower.

2. In Replevin for Taking so many Oxen, the Defendant made Conusance as Bailiff to T. S. Lord of the Leet, &c. for that the Plaintiff was americal there for not scouring a Ditch in a Highway, for which Americament

merciament the Defendant distrained the Oxen, &c. and upon a Demurrer to this Plea it was argued for the Plaintiff that it was ill; because by the Statute 18 Eliz. cap. 9. the Surveyors of the Highways are to have the Forseitures for not repairing them; but adjudged that the not Repairing, &c. is an Offence punishable in the Leet, as well as by the Statute. Raym. 250. Stephens versus Haines.

# Amerciaments in a Court-Leet, Distress and Pleadings in it, not good.

#### (D)

I. IN Trespass for Taking his Cattle, &c. the De-Leet (G) 21. fendant justified as Bailiff, &c. for an Amer-S. C. ciament in a Court-Leet, for that the Plaintiff at such a Place, and at such a Time lest the Gates, &c. open ad nocumentum inhabitantium, &c. adjudged that this is an Offence for which the Plaintiff ought not to be amerced in the Leet. Moor 356. Evington versus

Brimstone.

2. In Trespass, &c. the Desendant justified the Taking for an Americament in a Court-Leet, setting forth that it was affeered to 10 s. and that by a Precept out of Court directed to him, &c. he \* di-\* A Distress

ftrained for the said 10 s. and upon a Demurrer to is incident of this Plea it was adjudged not good; because the De-Common Right sendant did not set forth in his Plea, that the Plain-for any Amerists was amerced for an Offence done mithin the Juris-ciaments for diction of the Leet; there was likewise another Fault Offences done in this Plea, for it set forth that the Plaintiss was a- in or out of a merced, but did not say to what † Sum. Hob. 129, Court-Leet. 173. Wilson versus Hardingham.

8 Rep. 41.

in Greisley's Case. 1 Roll. Rep. 22. S. P. 2 Cro. 382. S. P. † Postea placito 4. S. P. See the Pleadings in this Case in the Appendix, Tit. Americament in a Court-Leet. Placito 3.

3. An Amerciament cannot be affessed in a Leet for not appearing at the Court, unless the Jury present that

that the Person owes Suit and Service to the Leet, for without such a Presentment it doth not appear to the Steward whether he is a Suitor or not. Cro. Eliz.

241.

4. So where an Action of Debt was brought for an Amerciament in a Leet, the Plaintiff declared that the Defendant was amerced, &c. and that the same was affeered by all the Jurors to 40 s. &c. for which this Action was brought; and upon a general Demurrer to the Declaration, the Defendant had Judgment; because the Plaintiff did not alledge to what \* Sum the Defendant was amerced; besides the Affeerment was wrong, for it ought not to be made by the Jury, but by those who are chosen by the Steward for that Purpose. 3 Lev. 206. Evelin versus Davis.

\* Antea placito 2. S. P. Postea placito 6.

5. In Replevin, the Defendant made a Conusance as Bailist to T. S. in which he set forth, that he the said T. S. had a Leet within his Manor of H. and that at such a Court there held, &c. the Plaintist was amerced for putting his Geese on the Common there, for which Amerciament the Desendant distrained the Cattle of the Plaintist, &c. and upon a Demurrer to this Conusance, the Plaintist had Judgment, because this was not an Article inquirable in a Leet. Cro. Eliz. 488. Wormleighton versus Burton.

6. In Replevin, &c. the Defendant avowed for an Amerciament in a Court-Leet, fetting forth in his Avowry that King Ed. 6. granted the Hundred of H. to T. S. in Fee, in which faid Hundred there was a Leet, Gc. that the faid T.S. granted the aforesaid Hundred to W. W. in Fee, but did not say by Deed; that the faid W. W. granted it to the Earl of L. in Fee by Deed indented and enrolled, &c. and that the Defendant being Resiant within the said Hundred. did not appear at a Court-Leet there held on fuch a Day, &c. for which he was amerced one Shilling; and that the Defendant distrained for the same: the Plaintiff demurred to this Avowry, and had Judgment, because the Defendant did not set forth that the Hundred was granted to W. W. by Deed; and it cannot pass without Deed; besides, this being a Title under a Grant, the Avowant ought to let forth that the Court was held within a Month after Easter; but but if it had been a Leet by Prescription, then the Law is otherwise. Cro. Eliz. 245. Porter versus Grey.

7. There were two Lords of distinct Manors adjoining to two Hundreds, and the Avowant was Lord of one of those Manors, who in Replevin brought against him for Taking the Cattle of the Lord of the other Manor avowed, &c. for that he was seised of the Manor of H. (being one of the said Manors) and so laid a Prescription, that the Plaintiff and all the Tenants of the other Manor have used to make Suit at the Leet within his Manor; and that the Lord of the other Manor used to appear at the faid Leet, or pay 4 s. and so prescribed to distrain any Inhabitant within the Hundred for the same, if not paid; and for this 4 s he avowed the Taking, O'c. within the Manor of the Plaintiff, who was an Inhabitant within the faid Hundred; and upon a Demurrer to this Avowry it was adjudged that the Cattle of the Lord of this Manor might be diffrained in any Place within the Hundred for Suit and Services, but that the Cattle of a Stranger could not for personal Things, as for an Amerciament for not appearing at Court, Ge. Owen 146. Gooley versus Potts.

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8. A Vill was amerced in a Court-Leet for not Moor 607. fetting up a † Pillory and Stocks at a Time appointed S. C. by the Court for that Purpose; and the Plaintiff be- Cro. El. 698. ing one of the Inhabitants of the faid Vill was di- S. C. strained for the same, who brought a Replevin, and † The Lord the Defendant made Conusance as Bailiff of the of the Leet Lord of the Leet to distrain for the Amerciament; ought to proand upon a Demurrer to this Conusance the Plaintiff vide a Pillohad Judgment, because the Defendant did not alledge ry; for tis ain Fact, that the Penalty was not paid to the Lord of Right to puthe Leet; for if he had received it of any other In-nift always habitant of the Vill, then the Plaintiff ought not by Amerciato be distrained for it; besides there was another ments, unless Fault in this Conusance, for the Defendant did not be can prefet forth a Precept from the Steward directed to him to firibe fo to do; levy the Penalty by Distress. Moor 574. Scroggs and for want of a Pillory be versus Stevenson. may be fined,

bis Liberties may be seised quousque; and by some Opinions 'tis a Forseiture of his Leet. See Keilw. 138, 140, 148, 152. Cro. El. 125. W. Jones 283.

See the Pleadings in this Case in the Appendix, Tit. Debt for an Amerciament in a Leet. Placito 4.

\* Antea (D)

placito 2, 4.

placito 1. 5. P.

9. In Debt for an Amerciament in a Court-Leet, the Plaintiff set forth in his Declaration a Power to hold fuch a Court twice in the Year; and that the Defendant was an Inhabitant within the Jurisdiction of the Leet, and owed Suit to the said Court which was held on fuch a Day, &c. whereof Notice was given to the Inhabitants; and that the Defendant did not appear at the said Court, for which Default he was presented by the Jury, and amerced by the Court, (but did not shew in what \* Sum) which Amerciament was affeered by two Affeerers (naming them) chosen and sworn in the Court, to 39 s. and 11 d. whereof he had Notice per quod actio accrevit, &c. there was Judgment by Default, and a Writ of Error brought in B. R. and the Error assigned was, that the Plaintiff declared the Defendant was amerced, Ge. but did not fet forth to what Sum; and that it was affeered by two Affeerers to fuch a Sum, but this was adjudged well as to the Amerciament, it not being necessary to amerce to a certain Sum; 'tis fufficient that it should be in general Words, that 3 Mod. 137. sit in misericordia, and afterwards to be affected to a particular Sum. 1 Salk 56. Brook versus Huftler & al'.

10. Trespass, Oc. for Taking a Silver Tankard, Desendant justified by Virtue of a Presentment in a Court-Leet, that the Plaintiff melted Tallow in a Cellar within the Jurisdiction of the Leet, ad commune nocumentum, for which he was amerced by the Jury to 5 s. and having Notice hereof, and being required to pay it he refused; whereupon the Defendant as Bailiff to the Dean and Chapter of Westminster, and by their Command, took the Tankard, Oc. the Plaintiff demurred to this Plea, and objected against it by his Counsel, that in setting forth the Presentf Antea (B) ment, the Defendant alledged that + prasentatum fuit. O'c. that the Plaintiff did melt Tallow, O'c. which was not a sufficient Averment that he did melt it: but that Exception was disallowed; then it was objected that the Defendant justified as Bailiff, Ge. without setting forth a Warrant from the Steward to him directed so to do, which he ought to have done, and to justity under the Warrant; and for this Reason it was held ill. I Salk. 108. Matthews versus Carey.

## Ancient Denrelne, what it is.

#### (A)

A Ncient Demessive (in Latin, Vetus patrimonium Domini) is a Tenure by which all the Mannors belonging to the Crown in the Reigns of Edward the Confessor and William called the Conqueror, were held by those Tenants to whom they were

granted by those Kings.

2. The Number and Names of which Manors, as of all other belonging to the Subjects, were written in a Book by the Command of the taid King William, after a Survey made of those Manors throughout England, which Book now remains in the Exchequer, and is called in Latin, Liber judicialis vel censualis Anglia, otherwise Domesday Book, which is derived from the Saxon Word Dom or Doom, which in English signifies a Sentence or Judgment.

3. This Book is an antient Record written in a fair and legible Character, and it consists of two Volumes, but not of equal Bigness; the greater Volume comprehends all the Counties of England which were surveyed at that Time, except the Northern Counties, (viz.) Northumberland, Cumberland, Westmorland and Durham, which Counties were never surveyed, nor Part of Lancashire, and except Essex, Suffolk, and Norfolk, which three last Counties were contained in

the lesser Volume.

4. This Survey was begun in the Year 1081, by five Commissioners assigned for that Purpose in every County; and it was almost five Years before it was sinished; and the Book was called Judiciarius liber, (as Gervase of Tilbury tells us) quia in eo totius regni descriptio diligens continetur, & singulorum sundorum Valentia exprimitur, and tis called Domesday non quod in eo de prapositis dubiis feratur sententia, sed quod a pradicto judicio non liceat ulla ratione recedere.

5. This Domessday-Book made in the Reign of William the First, is sometimes called Magna Rolla Winton, because it was of old kept at Winchester; and it refers to the Time of Edward the Contessor, for D 2

\* Thefe three Letters stand Regis Edwardi.

the Entries are thus, C tenet Willielmus Rex in Dominico & valent, &c. ibi (A) carrucata quantum for Tempore \* T. R. E. valebant, (i. e.) it was worth fo much tempore Regis Edwardi.

> 6. There is a third Book which differs from the other Two more in Form than in Matter; for 'tis in Quarto, and feems to be the more antient of the Two, 'tis written in very fair Characters, and there

are very few Rasures or Interlineations in it.

7. Mr. Blunt tells us, that 'tis probable Ingulphus who lived about that Time, never faw these Books; for he writes of incorporating these Rolls, as if they had not been made up into fo many Volumes already, and he likewise tells us, that Sir John Trevor, late Mafter of the Rolls, had a fair Copy of both these Volumes.

8. There is another large Book kept in the Exchequer, called likewise Domesday, embellished and flourished with Pictures, and many gilt Letters, and referring to the Time of Edward the Confessor; but 'tis only an Abridgment of the other two Volumes; and there is likewise a fifth Book kept in the Remembrancer's Office, which is the very same in Matter

with the Fourth.

9. Now wherever a Question arises, whether Lands are ancient Demesne, or not, 'tis to be decided by the Domesday-Book, made in the Reign of William the First, and from whence there lies no Appeal, nor is there any Averment to be made against it; and we are told that 'tis a Book of that Authority, that even that King himself submitted to it in some Cases, wherein he was concerned.

10. These old Verses following give us an Account what is contained in the Domesday Book of that

King.

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<sup>(</sup>A) It doth not appear what is meant by that Word Carrucata, whether Cart-Loads of any Thing, or Hides of Lands, for it signifies both, and Carrucata terra was antiently computed 120 Acres, fometimes 100 Acres, but my Lord Coke was of Opinion, that it contained no certain Number of Acres.

J. Quid deberetur fisco, qua, quanta tributa, Nomine quid Census, qua vectigalia, quantum Quisque teneretur seodali solvere jure, Qui sunt exempti, vel quos \* Angaria damnat; Qui sunt vel Gleba servi, vel conditionis, Quove manumissus patrono jure ligatur.

\* A Service which a Man was bound to perform in his own Person.

11. By what has been already mentioned it appears, that this Domesday-Book made in the Reign of William the First refers to the Time of Edward the Confessor; now the Lands which were in the Possesfion of those Kings, both before, and at the Time of the Making the faid Book, are therein thus distinguished; (viz.) The Lands, which were in the Possession of the Confessor, are called terre Regis Edwardi; but those in the Possession of the Conqueror, are called terra Regis, and are ancient Demesne; which Word Demesne is used in a special Signification, as 'tis opposite to Frank-Fee, (in Latin, feudum liberum) which is that which a Man holds at Common Law to him and his Heirs for ever; not by such Services which are required of the Tenants in ancient Demesne, according to the Custom of the Manor, but exempted from all Services whatfoever, except Homage.

12. Britton, an antient Writer in the Law, tells us, that there are two Sorts of Tenants in Ancient Demessine; one who hold their Lands freely by the Grant of the King, the other who hold them by Copy of Court-Roll at the Will of the Lord, according to

the Custom of the Manor.

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13. That such \* Tenants have several Privileges \* They are annexed to their Tenure; as first, they are not to be called by Bracimpleaded out of that Manor where their Lands ton, Villani lie; or if they are, they may abate the Suit by privilegiati; Pleading their Tenure; they are exempted from pay-they are free as to their Per-

sons, but not as to their Estate; their Privileges are coaval with the Government, or at least as ancient as any Estates or Tenures whatsoever; per Holt Chief Justice, in the Case of Hunt versus Bonner. 1 Salk. 57.

ing † Toll for all Things concerning Husbandry, or for their own Support and Maintenance, and they have the Privilege to be exempted from serving

on luries.

14. Mr. Fitzherbert was of Opinion, that they enjoyed these Privileges, because their Lands were originally granted to them, in Consideration of their ploughing the King's Lands, or for making and repairing his Fences, or such like Services for the Maintenance of his Houshold: For which Reason they had such Liberties given them, that they might not be disturbed in their labouring for the King; or if they were, the Remedy was at Hand; for the Writ called Monstraverunt was soon issued out, by which they were eased when ever they were disturbed in the quiet Enjoyment of any of their Privileges or Immunities.

15. And because there are several Lands in England held of Lords of Manors by this Tenure, I thought it requisite to treat thereof in a particular Manner; and having already shewn what ancient Demelne is, I shall in the next Place give some Account in what Manner it shall be tried, where a Question doth arise, whether such Lands are ancient Demene or not; but first I shall mention in what Manner a Tenant in ancient Demesne shall recover the Possession of his Lands where he hath been ejected or diffeifed thereof; and this is by a Writ of Right Close, directed to the Lord of the Manor where the Lands are ancient Demesne, commanding him to do the Tenant, who prosecutes this Writ, what is right in his Court; the Form of which Writ is in the \* Register, and in Fitzherbert's Natura Brevium fol. 11. 0c.

\* Folio 9.

† They are exempted from Toll, because originally they were to provide Victuals for the King's Garrisons and other Places in Time of War or Rebellion, and therefore they had this Privilege; and also that quiete exercerent aratra & terram excolunt. 2 Leon. 190. In the Town of Leicester's Case.

The Demandant in a Writ of Right Close cannot remove the Plea out of the Lord's Court upon any Account whatsoever, but the Tenant may remove it by Recordare.

4 Inft. 269,

16. This Writ is directed to the Lord of the Manor because 'tis his; and if an erroneous Judgment is given, it cannot be reversed by a Writ of Error, but by a Writ of false Judgment. 6 Rep. 11. in Jentlemans's Case.

17. The Issue was, whether the Manor of Bowden in Northamptonshire was ancient Demesse; and thereupon the Court awarded, that the Plaintiff Habeat Recordum libri de Domessay hic in Oct. Mich. &c. and accordingly the Book was brought into Court at the Trial; by which it appeared, that the Manor of Bowden in Leicestershire was ancient Demesse, but Bowden in Northamptonshire was not. I Brownl. 43. Griffin versus Palmer. See Hob. 188.

18. So where the Tenant pleaded ancient Demessie, held of the Manor of Sudbury in Suffolk, the like Issue was taken, and the like Rule made; and by a Certiorari out of the Court of Chancery, directed to the Treasurer and Chamberlain of the Exchequer, the Domessday-Book was sent by Mutimus into the Court of Common Pleas, at the Trial. Dyer 150.

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19. The like Issue was taken in Ejectment for Hutt. S. C. Lands in Longhope in Gloucestershire, and at the Trial, I Leon. 231, the Domesday-Book was brought into Court by an 233. S. C. Officer of the Exchequer, by which it appeared, that I Brownl. Hope was ancient Demesne, but there was no Men- 234. S. C. tion made of Longhope; upon which the Counfel for the Defendant offered to prove by Witnesles, that Hope and Longhope was the same Place, and that Longhope was formerly called Hope; but the Court would not admit fuch Proof; whereupon the Plaintiff had a Verdict, for the Defendant had not . prov'd his Issue; and admitting that Hope and Longhope was the same Place, the Defendant should have pleaded, that it was known as well by the one Name as the other. Sid. 147. Holdy versus Hodges.

20. Tenant in ancient Demesne brought the Writ Monstraverunt against the Lord of the Manor, who prayed, that the Tenant might prove, that the Manor was ancient Demesne; whereupon the Domesday-Book was produced, and this Manor was under the Title Terra Sansti Stephani, and not under the Title Terra Regis Edwardi, or Terra Regis; but

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he offerd to prove, that this Manor was in the Crown, by producing a Grant thereof from Edward the First, in which there was recited an Inspeximus Chartam, &c. of King Henry the First, and in that there was another Inspeximus Chartam of William the Conqueror, by which he granted this Manor to T. S. and in that Grant there was another Inspeximus Chartam Edwardi Regis; and so by this Means he would infer, that this Manor was ancient Demesne, as being the Possession of Edward the Confessor, and William the Conqueror; but the Court was of Opinion, that the Lands under the Title Sancti Stephani could never be intended to be the Lands of either of those Kings, so long after their Reign; and that the Word Inspeximus is only a Word of Form, and no Manner of Proof that this was ever the King's Manor. I Salk. 57.

21. The like Issue as before-mentioned was concerning the Manor of Otterbury, and Domesday-Book being brought into Court, it appeared that Edward the Confessor, in the twenty-eighth Year of his Reign, had given that Manor to the Abbot of D. and that it was not under the Title Terra Regis; for all the Lands which the Confessor had, or which were in the Possession of the Conqueror, in the twentieth Year of his Reign, were written in the Domesday-Book, the one under the Title Terra Regis Edwardi, and the other under the Title Terra Regis; and these and no other are ancient Lemession.

1 Salk. 57.

Ancient

## Ancient Demelne, Pzivileges of the Tenants in ancient Demelne allowed.

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1. THE Tenants in Ancient Demessive were by Reason of their Tenure obliged to manure and plough the King's Lands; and therefore to encourage them in their Labour, and that they might apply themselves to it without Disturbance, they had originally several Privileges, both in Respect of their Persons and Estates.

2. As to their *Persons*, they had the Privilege to be exempted from serving on *Juries*; and as to their *Estates*, they were not to be impleaded out of the Lord's Court, and were discharged of *Toll* for any Thing which did arise or grow out of their Lands, which they held in *ancient Demesses*, of which there

are tome Instances in the following Cases.

3. But first I shall mention what Remedy they had, where they were disturbed in the Quiet of Enjoyment of any their Privileges or Immunities, (viz.) Where Tenants in ancient Demelne are distrained to do other Services to the Lord, or for other Customs than what they or their Ancestors have usually done and performed, they may have the Writ Monstraverunt directed to the Lord, commanding him not to diltrain for other Services, &c. and if he will persit in Ditobedience to that Writ, then there is another Writ directed to the Sheriff, commanding him to fignify to the Lord, that he should not demand or diltrain for other Services, &c. and if he should disobey that Writ, then upon the Return thereof, an Attachment lies against him out of any of the Courts of Record at Westminster, to answer for the Contempt; and this is the usual Course of Proceeding in such Cases; but the Sheriff may raise the Posse Comitatus, or command the Neighbours to rescue and restore the Distress so taken in Contempt of the said Writs. Plond. Com. 120.

4. Tenants in ancient Demessie are called by Bracton, Villani Privilegiati, but such Privileges cannot now be created by Grant; and therefore the Chief Justice Holt.

Holt, in his Argument of the Case between Hunt and Bourne, was of Opinion, that they were coæval with the Government, or at least as ancient as any Estates or Tenures whatsoever. I Salk. 57. Hunt verfus Bourn.

5. They may not be impanelled upon any Inquelt, and therefore where they are returned by the Sheriff to be of a Jury, they may have the Writ de non ponendis, Oc. in Affis & Juratis directed to the Sheriff, or to any other Person who hath the Return of Writs; and if in Contempt of fuch Writ the Sheriff will return them, then they may have an Attachment against him; and even where the Defendant pleaded ancient Demesne; and the Cause being at Issue upon that Point, the Sheriff returned those who held in ancient Demesne; they may for that Reason be challenged and withdrawn; so held in Albanie's Case.

I Rep. III.

6. In an Action of Trespass, Oc. for Taking a Cable Rope for Toll, the Plaintiff fet forth, that Loflock is a Village, where the Lands are all held in ancient Demesne; and that the Tenants therefore are to be quit of Toll in all Places; and that he was an Inhabitant in Lostock, and Tenant of Lands which he held there in ancient Demesne, &c. The Desendant justified the Taking the Rope, by Virtue of a Custom in that Place, to take Toll for any Goods brought by Sea to merchandize; and then he alledged, that the Plaintiff brought thither by Sea twenty hundred Weight of Cable to merchandize: And upon a Demurrer to this Plea, the Defendant had Judgment, because the Privilege did not extend to Merchandizing, but only to be exempted from paying Toll of fuch Things which did arise or grow on their own Lands, or which are bought for manuring their Lands, or for the Support and necessary Use of their Families. Cro. Eliz. 227.

Ward ver.

7. Besides the Reason before-mentioned, why Tenants in ancient Demesne had this Privilege, they were to provide Victuals for the King's Garrisons, and for the Soldiers in other Places in Time of War or Rebellion; therefore they were not to be impleaded out of the Manor, that they might the better exercere aratra & terram excolere; and the Privilege to be discharged of Toll did not only extend

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to the Tenants of such Lands, but likewise to those who dwelt in Houses built on those Lands; this appears in the Case of the Town of Leicester, which was thus.

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8. ff. In Trespass, the Plaintiff set forth, that the Antea fo. 38. Town of Leicester was ancient Demesne, and that the S. C. Inhabitants thereof had used to be discharged of Toll; and that the Queen by her Letters Patents had commanded all Bailiffs, Mayors, Sheriffs, Gc. that those of Leicester should be discharged of Toll; but that the Defendant had taken Toll, &c. now tho' the Plaintiff did not shew, that the Toll was taken for fuch Things as were for the Support of his Family, or for manuring his Land; yet the Court inclined, that even an Inhabitant of an House, built upon Lands in ancient Demesne, tho he was not a Tenant himself holding by that Tenure, should be discharged of Toll. 2 Leon. 190. the Town of Leicester's Cafe.

9. In Replevin, the Defendant made Conusance, See the Plead-Oc. in which he justified the Taking, Oc. for Toll ings in this in Highworth Market, in the County of Wilts; the Case in the Plaintiff replied, that the is Tenant of the Manor of Appendix, An-Hanningdon in the said County, which Manor is cient De-ancient Demesne, and that the Tenants of ancient De-mesne pl.9.

mesne Lands are quit of Toll in all Places in England, G'c. Upon a Demurrer to this Replication, it was objected against the Plaintiff, that she had not well entitled herself to this Privilege, because she set forth the is Tenant of the Manor of Hanningdon; it should be that she is seised in Fee of such Lands, (naming them) which she held of 7. F. Esq; as of his Manor of Hanningdon, which Manor is ancient Demesne, &c. But adjudged that 'tis sufficient to alledge, that Homines & Tenentes de antiquo Dominio, are discharged of Toll without setting forth what Estates such Men have: The next Objection was, that this Privilege was laid too general, (viz.) to be discharged of Toll in all Places, &c. when by Law they are discharged of Toll of those Things only which arise or grow on their own Lands and which are for the Support, Ease and Maintenance of their Families; but adjudged that to be quit of Toll in all Places, must be intended all Places

where he is Tenant of fuch Lands. 2 Lutw. 1144.

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Savery versus Smith.

See the Pleadings in this Case in the Appendix, Ancient Demesne.

10. In Trespass for erecting a Stall in the Market-Place, &c. The Defendant pleads in Bar, that the Manor of Alton in Hampshire is ancient Demesne, and that he is seised in Fee of half an Acre of Land held of the faid Manor, and that there was a common Market there held, and kept in the Market-Place, Time out of Mind every Saturday: Then he fets forth a Cultom in the faid Manor for the Tenants thereof to be quit of Stallage in the faid Market, for their Goods, &c. fold therein; and that they might erect Stalls there to fell their Goods in the Market every Market Day; and that he being a Butcher, and Tenant of the faid Manor, did on fuch a Market-Day set up a Stall there to sell Flesh, but did not fay Carnem suam; and upon a special Demurrer to this Plea, it was adjudged to be an ill Plea, because the Defendant did not set forth that the Stall was set up to fell his Flesh, for it might be the Flesh of another Butcher, and fo not within the Custom. 3 Lev. 190. Chafin versus Bet worth.

### Ancient Demesne, Piblieges of the Cenants in ancient Demesne not allowed.

(C)

I. IN a special Verdict in Ejectment the Question in Law was, Whether Lands in ancient Demesne were extendable upon a Statute-Staple or Merchant; and it was adjudged that they were; Moor 211. Martin versus Wilks. See 5 Rep. 105. in Alden's Case.

Moor 211. S. C. 2 Brownl. 234. S. C. Postea (D) placito 8. 2. So likewise in a special Verdict in Trespass, the Jury sound that the Lands, &c. were held of the Manor of Bromesgrove in Worcestershire, which is ancient Demesne, and that the Desendant was seised thereof; and upon a Judgment obtained against him by the Plaintist, he brought an Elegit, by Virtue whereof

Ancient Demelne, Pzivileges of the, &c.

whereof the Sheriff extended the Lands, and deliverd them to the Plaintiff in Execution, who entered, apon whom the Defendant re-entered, and thereapon the Plaintiff brought an Action of Trespais; nd here again the Question in Law was, Whether Lands in ancient Demesne could be delivered in Exeution upon an \* Elegit: It was admitted, that a \* In Alden's freehold in ancient Demesne could not be delivered in Case 'tis ex-Execution, or recovered in any of the Courts of prefs that Common Law; and that ancient Demesne is a good cient Demesne Plea, even where the Possession is to be recovered, are extendable but that is not the Case; for here a Trespass was on an Elegit. brought for a Wrong done, in which Action ancient Demesne is no good Plea; because the the Freehold may come in Question, yet this Action is founded on a Wrong: 'Tis true in the principal Cafe, the Possession of the Lands is recovered by the Act of the Sheriff, and by Virtue of a Judgment obtained in a Court of Common Law, but the Land it self was never in Question upon any of the Proceedings; and fince the Judgment is in Force, the Elegit doth warrant the Extending the Defendant's Lands; and those Lands in ancient Demesne are his Lands, as well as those which are not held by that Tenure; therefore, neither the Sheriff who acted in Obedience to the Writ, nor the Plaintiff to whom he delivered the Lands in Execution, by Virtue of the Writ, are punishable in an Action of Trespass. Hob. 47. Cox versus Barnsly.

3. Quare Impedit will lie for a Disturbance, to present to a Church in ancient Demesne, tho it concerns the very Possessions in ancient Demesne; for the Common Law is as ancient as those Privileges, which Tenants in ancient Demesne have in their Lands; and therefore it will not fuffer a Failure of Justice under Pretence of any Manner of Privilege. Hob. 48. ibid. Cox versus Barnley, 5 Rep. Alden's

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## Ancient Demesne, of Fines levied thereof in the Manoz Court.

(D)

1. WHERE a Fine is levied of Lands in ancient Demessne according to the Custom of the Manor, and by him who is Tenant in Tail in Possession, tho without Proclamations, yet such Fine shall bar the Estate-tail. Dyer 60, 72. See 1 And. 71.

Elme's Cafe.

2. Feoffment of Lands in ancient Demesne to the Use of himself and his Wife for Life, Remainder to the Use of his Daughter Mary and the Heirs of her Body, to be begotten by one John Gwillim, Remainder over: Afterwards the faid Mary intermarried with John Gwillim, by whom the had Iffue Thomas Gwillim, who after the Death of his faid Father and Mother, levied a Fine in placito conventionis, in the Court of the Manor in which his Wife joined, by which Fine the Husband and Wife concesserunt the said Lands to A. B. C. for their respective Lives, and to the Survivor of them, under a yearly Rent, by Virtue whereof they entered: And afterwards the faid Thomas Guillim and his Wife levied another Fine in the Court of the Manor, to the Use of the said Thomas and his Heirs, and then by Bargain and Sale enrolled, he conveyed the Reversion (after the Determination of the faid Estate for Lives) to Thomas Payne and his Heirs, to whom he likewise released all his Right and died, leaving Islue Thomas, who was the Father of Richard the Lessor of the Plaintiff, against whom it was objected, that he was barred by the Statute of Limitation; because the Fine was thus levied by his Grandfather, being only a Discontinuance of the Estate-tail, Thomas his Father was entitled to his Formedon; and having neglected to profecute it for 20 Years, Richard his Son, (the now Plaintiff) tho' then an Infant, is barred by the Statute; and so it was adjudged, 'tis true by \* the Statute De modo levandi Fines, 'tis enacted that Fines shall be levied in the Court of Common Pleas, &c. and not elsewhere; but notwithstanding these negative Words, Fines may be levied

\* Anno 18 Ed. 1.

# ncient Demelne, of fines ledied thereof, &c.

vied of Lands in ancient Demesne in the Court of e Manor, because a Writ of Deceit lies against him tho levies Fines of fuch Lands in any other Court besides that of the Manor; and a Fine there levied is Discontinuance of the Estate-tail, but no Bar; for at must be a Fine with Proclamations, by Virtue of e Statute 4 H. 7; now this Fine being a Discontiance, and only during the Life of the Survivor of B. and C. tho' the Plaintiff's Father could not en-, and bring a Formedon during those Estates for ves, which did not determine whilft he was hving; t a Title of Entry commenced in his Son, as foon those Estates for Lives were determined; and he lying made no Entry in 20 Years after his Title did crue, is plainly barred by that Statute. 1 Lutw. 770. unt versus Bourn.

3. The same Point was resolved by Holt Chief 7u- 1 Lutw. 770. ce in the Case of Zouch versus Thomson, (viz) that S.P. 3 Salk. Fine levied of Lands in ancient Demesne in the Court 34. S. C.

the Manor, is a Discontinuance, but no Bar; for it covers a Freehold which works a Discontinuance of le former Estate, therefore a Fine levied in that ourt (if it may properly be called a Fine) mult be the same Consequence and Effect as other Fines e; and he held that Fines may be levied of Lands ancient Demesne in the Lord's Court, upon a Writ of ight Close, because 'tis agreeable to the Power of at Court in other Instances; for 'tis a Court which ay try the Mije joined upon a Writ of Right, hich hath the same Effect upon a Nonclaim as a ine hath; and if a Fine could not be levied there, could be levied no where of these Lands, so that le Privileges of these Tenants would be rather a disadvantage to them than otherwise, but that can- t In the Write ot be reasonably intended. I Salk. 57, 144. † Zouch erius Thompson. Postea placito 6. S. C.

and Count in this Cafe, the aint iff was only called Dominus manerii without fetting forth any Title to

e Manor; and this being objected to the Declaration, it was not allowed, beuse Tenant for Years or for Life are Domini manerii & pro tempore; nd if it had been necessary to set forth a Title, yet the Words ad exhæreditionem would have been sufficient to support the Action for the Loss sustain-In Winch Ent. fo. 26. there is a Writ of Disceit brought against the laintiff in the Fine alone; and upon a Demurrer to the De laration the laintiff had Judgment, because the Demurver was in Bar to the Action. In erne 93, the Writ was brought against the Deforciant alone, and in rownl. Redivivus, tis brought against the Plaintiss and the Deforciant the Fine. 1 Lev. 713. 4. But

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4. But in the Case last mentioned, it was held by Holt Chief Justice, that a Recovery in ancient Demesse, with double Voucher suffered in the Court of the Manor, was a Bar to an Estate-tail, as it is in the Court of Common Pleas; for it shall be intended that there was a good Foundation to support a Custom to suffer a Recovery in that Court, and 'tis Custom alone which hath given this Manner of Conveyance of Estates such Essect and Operation; and as to a Fine,

5. If a Tenant in ancient Demesne levies a Fine at Common Law of his lands, he hath a Possibility to have them again, because the Lord of the Manor may make it void by bringing a Writ of Deceit against the Parties to the Fine; but if the Cognisee is in Possession, and then the Cognisor releaseth all his Right, and confirms the Estate of the Cognisee; in such Case tho the Fine should be afterwards avoided, yet by Virtue of such Release the Cognisee and his Heirs shall hold the Land. In Lampit's Case.

10 Rep. 46, 50.

Lutw. 770. S. P. 1 Salk. 210. S. C. Antea pl. 3. S. C.

6. A Fine was levied at Common Law of Lands in ancient Demesne, and the Cognisor and Cognisee and his Wife being dead, a Writ of Deceit was brought against the Heirs of both of them, and against the Tertenant and him that purchated under this Fine. It was argued in Behalf of the Heir of the Cognitor, that this Writ would not lie against him, because the Levying the Fine was a personal Wrong done by his Ancestor, which died with his Person, for to is that Rule in Law, (viz.) Actio personalis moritur cum persona; but the Court held that this was not a personal Wrong alone, but an absolute Disinheriting all fucceeding Lords of that Manor for ever: And that it was unreasonable, that by the Death of the Cognifor (which was the Act of God) they should be deprived of their proper Remedy to recover their Right; then it was objected, that fince the Husband and Wife were both Cognifees in this Fine, this Writ ought to be brought against her Heir, as well as against the Heir of her Husband: But adjudged that the Tertenant is the proper Person, against whom this Writ doth lie, and that the other Perions may be brought in by Scire facias, if there should be Occasion. 3 Lev. 417. Zouch ver. Thompson.

7. In

5. In the Cafe last mentioned, Holt Chief Juflice held, that a Writ of Deceit would lie against the Cognisee himself, as well as against the Cognisor, because he is a Party to that Fine, which works a Wrong to the Lord of the Manor; and that it will lie against the Heirs of both of them, because the Fine work'd a real Deceit, and not a personal Wrong alone; for the Lord is barred of his Fines and other Duties arising from his Courts for evet; that the Lord in Pleading need not let forth any Estate in Particular; for 'tis sufficient that he is Dominus pro tempore; and lastly, that the five Years Nonclaim is not material; for tho' it may establish the Right of another, it can never establish its own Defects.

3 Salk. 35.

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8. In a Writ of Deceit the Plaintiff fet forth, that See the Pleadhe was seised in Fee of the Manor of Bromesgrove in ings in this Worcester hire, which Time out of Mind was ancient Case in the Demesne; and that all Lands held of the said Manor Apiendix, are pleadable in Curia manerii pradict' per parvum Ancient De-Breve de Recto Clauso, and that the Defendants in- meine pl. 1. tending to defraud the Plaintiff of the Profits of the Antea (C) 3. faid Manor, had levied a Fine, in the Court of Common Pleas at Westminster, of certain Lands Parcel thereof, by Reason whereof these Lands were now become Frank-fee, and pleadable at Common Law ad exhareditationem of the Plaintiff, and to his Damage of 40 l. upon a Demurrer to this Declaration it was objected, that it was ill; because the Plaintiff and let forth, that the Lands were pleadable in Curia manerii, but did not thew before whom the Court was held; but the Objection was disallowed, and the Fine was reverted because it was levied coram non judice, which makes it entirely void. I Luiw. 711. Countels of Plymouth versus James.

9. Judgment in Ejectment for Lands in ancient Demejne; and upon a Writ de procedendo ad execu-. tionem judicii out of the Court of King's Bench, directed to the Suitors of the Court of the Manor, they returned that they could not execute it, because it appeared to them by a Transcript of a Fine levied of these Lands at Common Law, that they were now become Frank-jee; but this Return was not good, because the Parties had allowed the Jurisdiction of the Court before; and 'tis now too late after

Judgment to say, that the Lands are Frank see; for if they are, that ought to have been pleaded before the Plaintiff had obtained this Judgment, Moor 451. Gybon versus Bowyer.

# Ancient Demesne, by what Ads the Te-

#### (F)

BY levying a Fine thereof at Common Law, the Lands are for ever after Frank-fee, if the Lord of the Manor hath not Judgment of Reversal of such Fine, upon a Writ of Deceit brought by him against the Cognisor or his Heir, and against the

Tertenant.

2. Where the Lord of a Manor in ancient Demessive consists the Estate of his Tenant to hold by certain Services at Common Law; the Quality and Tenure of the Estate is by this Means altered, though there is no Transmutation of Possession; for the Tenant is now discharged from the Customs of the Manor which he was bound to perform, and shall never after such Consistance be impleaded in the Court of the Manor by a petit Writ of Right Close; so held in 9 Rep.

3. A Fine was levied at Common Law of Lands in ancient Demesse, and upon a Writ of Deceit brought, the Desendant pleaded, that the Lord of the Manor in the Reign of Ed. 2. did by Fine release to T. S. (under whom the Desendant claimed) one Messuage and one Yard-Land, and all Customs and Services, &c. excepting 2 s. Rent for one Acre of Land, Suit of Court and Relief; and the Question now being, whether the Seigniority as to the Custom of ancient Demesse was extinguished by this Release of the Customs and Services, adjudged that it was. Moor 143. Griffith vertus Clerke.

4. A Custom that Lands in ancient Demesne shall be equally divided between the Heirs Males, and there being a Fine levied of these Lands at Common

Law,

# Ancient Demeine, where 'tis a good, &c.

Law, it was adjudged that the Custom was gone; because by this Fine the Lands were changed from ancient Demesne to Frank-see; and the Custom did not run with the Lands simply as they were Lands, but as they were ancient Demesne; and this is not like a Fine levied of Gavelkind Lands, because there the Custom of dividing runs with the Lands. Dyer 60, 72.

# Ancient Demelne, where 'tis a good Plea, and where not.

(·G)

#### See Pleadings (A) 13.

I. IN all Cases where the Freehold may come in Raym. 249.

Question ancient Demesse is a good Plea; 'tis so S. C. there in Partition between Tenants in Common; 'tis true cited'.

in such Case the Land is not directly in Demand; but 'tis so collaterally, and therefore if the Plaintist should recover, it would make his Part Frank-see.

1 Roll. Abr. Tit. Ancient Demesse (E) 10.

2. In Ejectment ancient Demesse is a good Plea, because by common Intendment, the Right and Title of the Land will come in Question, this being the 2 Roll. Rep. usual Action now brought for the Trial of Titles; 181. S. C. therefore if it should not be a good Plea in this Acceited. tion, the ancient Privileges of those Tenants would 5 Rep. 105. be lost. Gro. Eliz. 829. Smith versus Alden. 2 And. S. C. by the Name of Alden's Case.

Hob. 47. S. P. 1 Bulft. 108. S. P. Hetley 177. S. P.

3. 'Tis no good Plea in † Trespass, nor in an Astion † 5 Rep. 105. If Waste, because in that Action the Judge of the in Alden's Court of ancient Demestre cannot award a Writ of Case. Inquiry of the Waste; that must be done by the Shenish, who by the Statute 13 Ed. 1. is commanded to so in Person to view it, which cannot be supplied by their Officer, and so there would be a Failure of E 2 Right:

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Right; and because an Action of Waste will not lie in the Court of the Manor; therefore if Judgment should be recovered in such Action at Common Law, it would not make the Lands Frank-fee. Hob. 47, 48. Green versus Baker there cited.

\* See the 4. Pleadings in ment, the Appendix, Bray

Tit. Ancient Demesne, pl. 6.

4. In Ejestment the Defendant pleaded in \* Abatement, that the Lands were Parcel of the Manor of Bray, which was ancient Demessive held of the Crown, &c. and that the Lands were impleadable only in the Court of the Manor, and upon a Demurrer to this Plea, the Plaintiff had Judgment, because Parcel or not Parcel is triable at Common Law; he should have pleaded, that the Lands were ancient Demessive and this would have made them impleadable in the Lord's Court only, and not elsewhere. I Salk. 56. Barker versus Winch.

Ancient Demesse is a good
it must be alledged, that the Lands are held of some
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Tenure of the Manor, or set forth a Fine levied, or
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floopel, and pray Judgment whether he shall answer
Interest of the
Land is bound;

tis likewise a good Plea to an Assise brought by Tenant in Elegit. 5 Rep. 105. In Alden's Case. Cro. Eliz. 829. S. C. 2 And. 178. S. C.

6. A Writ of Right Close was brought in a Court of a Manor in ancient Demesne, and the Plaintiff made Protestation to sue there in Nature of a Writ of Right at Common Law; the Tenant joined the † Mile † This is a upon the meer Right; and thereupon the Record Word of Art appropriated to was removed by an Accedas ad Curiam, (which is a a Writ of Right; tis Writ that lies for him, who fears Partiality in this inferior Court,) but it was held that this was not a derived from sufficient Cause to remove it, because this Islue Miffum, bemight be tried there; and therefore a Procedendo was cause both awarded. Dyer 112. in Sir Humfrey Stafford's Cale. Parties put

themselves upon this Point which of them hath the Right; so that what in all other Actions is called an Issue, this in a Writ of Right is called Mise.

7. The

7. The Defendant recovered in a Writ of Right Close directed to the Bailiffs of the Manor; and the Tenant brought a Writ of false Judgment to reverse it; and affigued for Error, that the Writ of Right Close was directed to the Bailiffs, &c. when the Court was held before the Suitors; but the Judgment given in the Manor-Court was affirmed, because it shall be intended that the Bailiffs were likewise Suitors. 3 Leon. 63.

8. In Ejectment after an Imparlance, the Defendant Latch 83. pleaded ancient Demesne; and upon a Demurrer to S. C.

this Plea, it was infifted for the Plaintiff, that it came too late; but adjudged that fince the Lands for which this Action was brought were not impleadable at Common Law, this Plea is foon enough after

an Imparlance. Cro. Car. 6. Marshall's Case.

9. In Ejectment the Defendant venit & dicit, that the Tenements in vifu posita are held of F. N. as of his Manor of Gillingham, which Manor is de antiquo Dominico of the Crown, and Time out of Mind have been placitat' & placitabil' in the Court of the said Manor by the Petit Writ of Right Close, &c. the Defendant replied, that bene & verum eft, the Tenements are held of the said Manor as the Defendant hath pleaded, but that they are Copyhold, Parcel of the said Manor; and upon a Demurrer to the Replication, the Plaintiff had Judgment, for though this Replication is repugnant in fetting forth that the Tenements are held of the Manor, as the Defendant had pleaded, which was de antiquo Dominico, and then to fay, that they are Copybold, Parcel of the Manor; yet the Plea is ill because of these Words in visu posita, for in Ejectment the Tenements are never put in view, Gc. 3 Lev. 305. Smith verius Frampton.

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#### (A)

1. The Enants of a Manor may make By Laws to bind themselves; this seems very reasonable, though in Hob. 212, this Matter was doubted; but its a greater Doubt whether Strangers shall be bound by such By-Law or not, acting against it, and within the Precinct. See Godb. 179, and Moor 579.

2. But when such a By-Law is made by the Homage according to Custom, the not necessary that the Breach of it should be presented by the Homage; and if a Penalty is inflicted for a Breach for which the Lord of the Manor doth distrain, and doth not say whose Cattle; yet it shall be intended the Cattle of the Offender; and therefore such By-

Law is good.

Dyer 323. S. C. Godb. 50. S. C.

3. In Replevin the Defendants made Conusance, as Bailiffs of the Lord Cromwell, fetting forth, that he was feifed of the Manor of North Elmes; and that it was a Custom of the said Manor for the Homage to make By Laws for the better ordering their Cattle as often as there should be Occasion; and that at such a Court, &c. the Homage (whereof the Plaintiff was one) made a By-Law, that none should put his Sheep to depasture in the Lands of the Lord, under the Penalty of 10 s. and that the Plaintiff had put in his Sheep, &c. by Reason whereof he had forfeited 10 s. which not being paid, they destrained for the iame, &c. and upon a Demurrer to this Conusance it was objected, that the Defendants had not let forth, that the Breach of this By Law was presented by the Homage; nor that it was within the Custom, for that was to make By Laws as often as there should be Occasion; and the Defendants did not aver that there was any Occasion to make this By-Law, and that it was for better ordering their Cattle; and their Defendants had not alledged that the Cattle were better ordered by this By-Law; but the better Opinion was, that the By-Law By-Law was good, and that the Breach thereof need not be presented by the Homage; for the Plaintiff himfelf was one of the Homage who made this Ry-Law; and it shall be intended that there was a Necessity to make it, otherwise it would not have been made; but if there was no such Necessity, it should have been alledged on the other Side. 3 Leon. 38.

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4. Sir John Stowell, Lord of the Manor of Somerton Winch 30. in the County of Somerset, prescribed to have Curiam S. C. legalem in a great Moor, Part of the faid Manor, for March 28. the better ordering the Cattle of the Tenants, in S. C. which Moor they had a Right of Common; and at W. Jones 434. which Court all the Commoners ought to appear by S. C. which Court all the Commoners ought to appear by Cultom, Ge. and that an Homage hath been used to be tworn there by the Steward, which Homage hath used to present all Offences in the Common, and to make By-Laws for the better ordering thereof, which the Commoners ought to obey under a reasonable Penalty to be affessed on them, and to be forfeited to the Lord; and that at such a Court, Gc. the Homage being sworn, made a By-Law, that no Commoner should put his Sheep in such a Part of the said Moor under the Penalty of 3s. 4d. to be forfeited to the Lord of the Manor; and that this By-Law was published and proclaimed in the Court; in Replevin, Oc. the Defendant made Conusance for the Taking, and let forth all the Matter above-mentioned, and that the Plaintiff had offended against this By-Law, and so justified the Destraining for the Penalty; and upon a Demurrer this was adjudged a good Law, because it did arise out of a Custom which began by the Consent of all Parties, and therefore shall bind all the Commoners, especially since it doth not take away all the Common, but only for Sheep, and that in a particular Place of the Moor; so that the Commoners may have Common for other Cattle, and over all the Moor but only in that Place; and this is not like my Lord Cromwell's Case; for there the Tenants were to depasture their Sheep in the Lands of the Lord of the Manor at his Will only; and in the principal Case it was adjudged, that every Commoner ought to take Notice of this By-Law without any particular Notice given to him, because they are all to appear at Court, and the Custom is alledged to be, that if the E 4 By-Law

By Law is proclaimed, it shall bind them all, which is a personal Thing. Crp. Car. 497. Tintney versus James.

## By-Laws and Oyders made at a Court. Baron, and Pleading them, not good,

(B)

1 And. 234. S. C. I. IN Replevin the Defendant avowed, &c. for that he was feifed in Fee of the Manor of H. in which there is a Cultom, that the greater Part of the Tenants at any Court held for the faid Manor, and there appearing, may make By Laws for the most Profit and belt Government of the Tenants of the faid Manor, and that fuch By-Laws should bind them; and that at such a Court held in the faid Manor, the Homage being the greater Part of the Tenants there appearing, made a By-Law, that no Tenant of the said Manor should put a Steer into such a Common being a Year old or more, upon Pain of 6 d. for every Offence; and that it should be lawful to distrain for the same, Ge. and upon a Demurrer to this Avowry it was adjudged that this By-Law was void; for where a Man hath Right of Common for all his commonable Cattle, 'tis against Common Right to restrain him from one Sort: But if the By Law had been, that none should put in his Cattle before such a Day, it had been good; because it doth not absolutely take away, but regulate the Right and Inheritance: For tis the Nature of a By-Law, to establish good Order amongst the Tenants concerning Affairs within the Manor, which otherwife by Law they are not compellable to do. I Leon, 189. Erbury verius Laton.

3 Leon. S. C. 3 Leon. 7. S. C. Bendl. 159. S. C. 2. In fecond Deliverance, &c. the Defendant made Conusance as Bailist of S. M. setting forth that he was seised in Fee of the Manor of D. and a Custom there to make By-Laws, and to set Penalties on those who offended against them, and to distrain for the same, and that at a Court-Baron there held on

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# Baron, and Pleading them, not good.

fuch a Day, coram sectatoribus, Oc. it was ordered by the Homage ex affensu aliorum tenentium of the said Manor, Oc. and afterwards at another Court corans sectatoribus (not naming them) prasentatum fuit per homagium, that the Plaintiff kept Cattle, Gc. contrary to the faid Order by which the Penalty (which was 20 s.) was forfeited, but that ex gratia Curie it was affected to 6 s. 8 d. Gc. and upon Demurrer to this Conusance it was adjudged for the Plaintiff: because the Defendant did not alledge that the Bylaw was made ex affensu omnium tenentium or majoris partis tenentium present at the Court, but only ex affensu aliorum tenentium besides the Suitors; neither did he alledge in Fact any Breach of this Order, but only that prasentatum fuit per homagium, that the Plaintiff had kept Cattle, Oc. contrary to the faid Order; it was farther objected, that the Defendant had fet forth that presentatum fuit by the Homage coram lect atoribus, without naming them, which is ill. and lastly, that this Penalty could not be affeered, because as the Defendant had pleaded it was a certain Sum, viz. 20 s. and if that should be affeered, then the Penalty demanded, and for which the Diffress was taken, is less than what was imposed by the By-Law, and consequently not maintained by it. Moor 75. Scarling versus Criet.

3. In Replevin, &c. the Defendant made Conu- Sce the Pleadfance as Bailiff of T. S. Lord of the Manor of H. in ings in this which there was a Cultom for the Steward, with the Case in the Confent of the Homage, to make By-Laws for the good Appendix. Government of the Manor, Oc. and to impose Pe- By-Laws, nalties on those who break them, and to distrain for pl. 10. the fame; and that the Inhabitants of O. within the faid Manor used to repair a Bridge, Ge. for the Convenience of those Commoners who have Right of Common there in such a Waste; and that at a Court held there on fuch a Day the Steward, with the Confent of the Homage, made a By-Law, that the Inhabitants of Ovingion thould repair that Bridge before such a Day, under a certain Penalty; then he fets forth that it was not done, and that this Default was prefented at the next Court; and thereupon the Plaintiff (being one of the Inhabitants of O.) was diffrained; and upon a Demurrer to this Conusance, the Plaintiff had Judgment; because the Desendant had

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fet forth, that the Steward made this By-Law with the Consent of the Homage; whereas all By-Laws are to be made by the Homage; there was likewise another Fault in this Conusance, because it set forth a By-Law, &c. to impose a Penalty on a Township of Ovington, and to be levied on a particular Person without any Remedy by Contribution. 3 Lev. 48. Wells versus Cotterell.

4. The Freeholders in a Leet may make By-Laws relating to the publick Good, for all Matters within the Leet, and in such Case those By-Laws shall bind all People, but not if they are made for any private Interest, for then they bind only those who agree to them; and it must be in Pursuance of a Custom to

make fuch By-Laws.

## Common by Copyholders.

(A)

Prescription (A) 1, 4.

It had been better if he had set forth prædictorum tenementorum prædicti Manerii.

1. MY Lord Coke tells us, it was adjudged in Foiston's Case, that where a Copyholder alledged that infra manerium prædict' talis habetur, necnon a toto tempore cujus contrar' memoria hominum non existit, habebatur consuetudo, quod quilibet tenentes pra-dictorum tenementorum vocat H. &c. have used to have Common in such a Place, Parcel of the Manor of, Oc. and that he is a Copyholder of the faid Tenement, that this Custom as well for the Matter, as for the Form of Pleading it, is good; for a Copyholder cannot prescribe in his own Name, by Reason of the Meanneis of his Estate; and if he had claimed Common in the Lands of another Person, he must prescribe in the Name of the Lord of the Manor thus, f. That the Lord, &c. and all his Ancestors, and all those whose Estate he had, &c. have had Common in fuch a Place, &c. for him and his Tenants at Will: But we are told when a Copyholder claims Common in the Lands of the Lord, he cannot prescribe in his Name, because the Lord himself cannot prescribe to have Common in his own Lands; therevich are

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therefore the Copyholder must alledge, that within the Manor there is fuch a Custom, &c. 4 Rep. 31. Foiston versus Crachrode.

2. Where a Copyholder hath Common of Pasture Lutw. 126. in the Waste of the Lord, but not within the Manor, S. C. he hath such a Right of Common as belonging to his Copyhold Tenement; and if the Lord enfranchises his Copyhold, the Right of Common still remains; and in Pleading, he may thus make a Title to himfelf, (viz.) that A. B. Lord of the Manor, Time out of Mind had Common in such a Place, Ge. for himself and his customary Tenants, Ge. but if the Waste (in which he had Common) had been within the Manor, in such Case, by the Enfranchisement of the Copyhold, the Common had been extinct, because the Common belonged to the Estate; but if out of the Manor, then it belongs to the Land, and

not to the Estate in the Land. 1 Salk. 170. Cromber See Coke versus Oldfield.

3. Copyhold Lands escheated to the Lord of the Manor, in which Manor T. S. the Copyholder had Right of Common by Prescription, in fixty Acres of Land, Parcel of that Manor; afterwards the Lord granted this Copyhold to E. G. in Tail with all the Commons to the same belonging, or therewith used : the Question was, whether E.G. the Grantee should have Common in these fixty Acres; and adjudged that he should, in the same Manner as T. S. the Copyholder had it; for though he had the Right of Common by Prescription, and the ancient Copyhold is now gone by Unity of Possession in the Lord, yet . the Grant to E. G. shall enure as a new Grant of the Copyhold Estate. Cro. Eliz. 794. Worlidge versus Kingsmill.

4. T. S. a Copyholder had Common appurtenant in the Lands of B. G. and afterwards B. G. made a Feoffment of the same Lands to T. S. the Copyholder, who made a Lease thereof to B. G. with all Commons used with the said Lands; now though the old Common was extinguished by the Feoffment, yet adjudged this was a good Leafe of a new Common, and it shall be used with the Lands, tho tis not the same Common. Cro. Eliz. 570. Brad-

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Yel. 189. S.C. I Brownl. 220. S. C. 2 Brow. 209. S. C. 1 Bulft. 2. S. C. Noy 126. S. C. \* Moor 667. Fort versus Ward S. P. See 2 Brow. 211. Vaugh 251. S. C. 1 Lev. 253. S. C. 1 Vent. 163, 251. S. C. See the Pleadings in this Cafe in the Abbendix, By-Laws, pl. 11.

5. The Copyholders for Life had Right of Common, Time out of Mind, in the Lord's Waste, who granted to T. S. a Copyholder for Life, all his Copyhold, Messuage, Lands and Tenements with the Appurtenances, to have and to hold the same to the said T. S. and his Heirs for ever: Adjudged that by this Grant to him in Fee, he had lost his Right of Common; because by the Custom of the Manor, that \* Right was annexed to his Copyhold Estate, which being destroyed by his own Act in accepting the Freehold, his Common is likewise destroyed, and cannot continue without special Words for that Purpose. 2 Cro. 253. Marsham versus Hunter.

6. In Replevin for Taking a Horse in a Place called the Fenn, the Desendant made Cognisance as Bailist to Sir Henry North, for that the Fenn contained 10000 Acres of Pasture, of which a Place called the Delse, being 100 Acres, was Parcel Time out of Mind, &c. and that it was the Freehold of Sir Henry North; and that he took the Horse there

Damage-fesant, &c.

The Plaintiff replied in Bar, that the Delfe was Parcel of the Fenn, and confessed that it was the Freehold of Sir Henry North; but that the Delfe had been Time out of Mind Parcel of the Manor of Mildenball, of which Sir Henry was seised in Fee; and that the Plaintiff at the Time of the Taking, Oc. was seised of an ancient Messuage in Mildenhall, (being one of the Free Tenants of the faid Manor,) and held of the faid Manor by the Rents and Services, Oc. and that Time out of Mind there had been feveral ancient Messuages, held of the said Manor by the Free Tenants in Fee by Rents and Services, Parcel of the faid Manor; and several ancient Copyhold Tenements of the faid Manor, grantable by Copy of Court-Roll; and then he prescribes that the Freeholders, together with the Copyholders, had the fole and feparate Pasture of the said hundred Acres, called the Delfe, for all their Cattle (except Hogs, Sheep, and Northern Steers) Levant and Conchant on their respective Freehold and Copyhold Messuages; and that the Plaintiff being seised of his said Messuage, put in his Horse, which was Levant and Couchant, &c. and that the Defendant did wrongfully take and detain ain the same: Upon a Demurrer to this Cognisance t was objected.

That Freeholders and Copyholders could not join Objection.

n claiming an entire Interest in any Thing.

That an entire Thing could not be claimed by Pre-Cription and Custom at one and the same Time, berause the Grant to the Freeholders, and the Custom of he Copyholders, could never commence at one and the same Time.

That this was an Invention wholly to exclude the Lord of the Manor from his own Land, which the Law will not allow; 'tis true he may, as to some particular Times, but ought not to be excluded

at all Times.

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That 'tis contrary to the Nature of a Common. or of a Feeding, to be appendant or appurtenant to a Messuage: because that is a Place for Men to inhabit, and not for Beafts to be Levant and Couchant there: And the Common or Pasture is to be eaten by the Cattle Levant and Couchant on the Land, and not in the House; 'tis true a Man may prescribe to a Common in gross, but then it must not be for Cattle Levant and Couchant any where; besides this Prescription and Custom are not good, because a Prescription for the sole Pasture all the Year, ought to be general for all Cattle, and not restrained to a limited Number; but 'tis not so in the Case of a Common, for there the Levancy and Couchancy is the Measure, or the Quantum of the Common, and there the Com-moner hath but Part of the Herbage, and the Lord of the Manor the rest; but where all the Pasture is claimed, (as in this Case it is) 'tis absurd to limit it to a certain Number of Cattle Levant and Couchant, &c. To which it was answered, that the Prescription Answer. and Custom might well commence together; for at first it might be only an Usage amongst the Copyholders to have the Feeding of the Delfe without excluding the Lord; but afterwards he might grant to the Freeholders the fole Feeding simul cum the Copyholders, excluding himself; and the such fole Feeding was restrained to Cattle Levant and Couchant, by which it feems to be a meer Common; yet tis no more than Evidence of a Common; and by the Demurrer the Defendant had admitted it to be a fole Pasture, as the Plaintiff had declared; and it shall not

\* Reported in I Lev. 253. to be good.

I Vent. 123, 163. S. C.
I Lev. 269. S. P.
See the Pleadings in this Case in the Appendix, Common, pl. 12.

be intended but that the Cattle Levant and Couchant were enough to eat up all the Pasture; and if so, then the \* Prescription is good, to which the Count inclined. I Saund. 350. Potter versus North.

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7. In Replevin, &c. for Taking his Cattle in a Place called Emlands, in the Parish of Blisland, &c. the Defendants made Conusance as Bailiffs to Dr. Barker and his Wife; for that the Place where, Oc. contained five hundred Acres of Land, and fifty Acres of Moor, and Time out of Mind had been Parcel of the Manor of Blisland, of which the said Doctor and his Wife were feited in Fee; and so justify the Taking, &c. Damige-fesant; the Plaintiff replies in Bar, that Time out of Mind within the faid Manor, there had been several Copyhold Tenements, Parcel of that Manor, and a Cultom Time out of Mind, that the Copyholders of the faid Tenements had, and used to have the sole Feeding in the Place where, Gc. yearly, and every Year at their Will, as belonging to their Copyhold Tenements; and that the faid Copyholders before the Time of the Taking, gave the Plaintiff Licence to put his Cattle into the Place where, &c. by Virtue whereof he put them in; and that the Defendants wrongfully did take them; the Defendants rejoin, that the Plaintiff put in the Cattle of his own Wrong, and traverle the Cultom alledged in the Bar; upon which they were at Issue, and the Plaintiff had a Verdict, O'c. it was objected in Arrest of Judgment, that it was not set forth what Estate the Copyholders had in their Copyhold Tenements, to which they claimed the fole Feeding to belong; to which it was answered, that it was not material fo to do, for let their Estates be what they will, either in Fec, for Life or for Years, the Cultom had annexed the fole Feeding as a Profit Apprendre, or Perquifite to their Estates for the Time being, which they claimed by Virtue of the Custom of the Manor, and not by Prescription; for they cannot prescribe against the Lord of the Manor, nor against any other Perfon but in his Name; 'tis true he who hath a Freehold at Common Law, and would claim fuch a Privilege, must shew his Estate, and prescribe in the Name of him who hath the Fee-simple by a Que Estate. Then

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Then it was objected, that this Custom was not Objection. od to exclude the Lord of the Manor for the whole ear: for though the original Grant might be fo to me Freeholders, and to which they might preribe, if fuch Grant had been Time out of Mind: t the Lord could not make such a Grant to his wn Copyholders, by Reason of the Meannels of their state, especially if their Estates were only for Life Years.

The Answer was, that a Man might \* prescribe for Answer. fole Feeding, because it might commence by \* Hurt. 45. rant; and if such a Claim is good by Prescription, Pitt versus may likewise be good by Custom; for such Custom Cheek. ight originally commence by a voluntary Agreeent of the Lord of the Manor with his Copyhold enants, that they should have the fole Feeding, &c. e better to improve their Estates, and such a contiual Usage was now grown into a Custom.

It was objected, that it was not alledged that the Objection. opyholders had the fole Feeding, &c. for their Cat-Levant and Couchant on their Tenements, which ley ought to do, because otherwise the Feeding uld not be appropriated to their Tenements; which very true, where one claims Common appurtenant to Answer. s Lands; for there he mult fet forth, that 'tis for s Cattle Levant and Couchant, for otherwise his Preription is not good; because where the Claim is of mmon appurtenant to his Lands, 'tis only a Claim of irt of the Herbage, and the Lord is to have the ft; 'tis for that Réason that the Commoner in such afe must alledge it to be for his Cattle Levant and uchant on his Lands; for the Profit he is to have tends no farther than to fuch Cattle, which he can asonably maintain on his own Lands; and therere, if he put more into the Common, 'tis an Inry done to the Lord of the Manor, and he shall be unished as a Trespasser; but in the principal Case le Commoners claim all the Herbage exclusive of le Lord, and therefore 'tis not material whether 'tis ten by their Cattle Levant and Couchant only, or by y other or more; besides 'tis absurd to claim the e Feeding, and all the Herbage, and then to limit to Cattle Levant and Couchant, &c.

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Objection. Monk versus

Butler.

Answer.

It was objected, that the Copyholders could not \* 2 Cro. 574 licence a \* Stranger to put in his Cattle; because the Herbage is for the Benefit of their own Cattle and not for the Cattle of another who is not a Copyholder of that Manor; which is likewife true, where a Commoner claims Common in gross without Number, or where he claims it for his Cattle Levant and Couchant, &c. because in such Case, if he lieence a Stranger to put in his Cattle, itis a Surcharge of the Common; but 'tis not so where the Claim is of the whole Hirbage, as in this Cafe.

Objection.

And laftly, admitting that the Copyholders might licence a Stranger to put in his Cattle, Gc. yet in this Case the Plaintiff had not set forth a sufficient Licence, because it was not by Deed executed.

Answer.

To which it was answered, that he who hath an Interest in the Soil it felf, may licence any one to use any Liberty in the Soil, though he who only claims a Right of Common, cannot give fuch Licence; but in this Case the Copyholders have an Interest in the Herbage, and therefore they may licence any one to feed it; for if 'tis a Trespass, no Body can punish the Trespasser besides themselves, and they may dispence with fuch a Trespass by their Licence only without Deed; but 'tis otherwise in the Case of a Commoner, because the Owner of the Soil may punish the Trespasser; therefore the Licence of a Commoner to a Stranger to put in his Cattle, will not excule the Trespais, unless such Licence is by Leed, where his Interest is grantable.

Hale Chief Fustice and the Court disallowed all the Exceptions but the last, for the Reasons before mentioned; but he held that the Licence was not good without it had been granted by Deed; but Islue being taken upon another Point, and a Verdict found for the Plaintiff, the Insufficiency of Pleading this Licence was cured by the Statute of Feofails after a Verdict, and to the Plaintiff had Judgment. 2 Squad

324. Hoskins vertus Robbins.

A Copyholder having Right of Common, brought an Action on the Case against the Defendant, for putting his Cattle into the Common, whereby he lost his Common, &c. the Jury found that the Defendant did not put his Cattle into the Common, but 164 not

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they of themselves eat the Pasture there: It was adjudeed that the Jury had found the Substance of the Issue for the Plaintiff, and that was the Depasturing the Cattle: for 'tis not material whether they were put nto the Common by the Defendant, or whether they entered of themselves: And it was resolved, that the Copyholder might have this Action, because he might distrain the Cattle Damage-fesant; and that he might be hindered from taking such Distress till the Cattle were out of the Common; therefore, if he bould not have this Action, he would be without any Manner of Remedy; and though in this Cafe it did not appear, that there were any more Commoners besides the Plaintiff; yet if there were not, he shall have this Action, and so he shall, if there were more; because each of them hath a particular Damage; but it must be so great that he loseth his Common. 9 Rep. 111. Robert Mary's Cafe.

9. The Plaintiff brought an Action on the Cafe, &c. See the Pleatfor disturbing him in his Common, &c. and de-ings in this clared, that Sir William Child was Farmer of the Ma- Case in the nor of Oxton Netherall in the County of Nottingham, Appendix, of which faid Manor twenty Acres in the Possession Common, of the Plaintiff were Parcel and Copyhold, lying and Ge. pl. 13. being in Blydworth; and lays a Prescription in Sir William Child, &c. to have Common of Pasture for his Copyhold Tenants of the faid twenty Acres in a certain Waste called Alamore, for all their Cattle Levant and Couchant on the faid twenty Acres; then he fets forth that at such a Court held in and for the said Manor the faid twenty Acres were granted to him (the Plaintiff) and his Heirs; and that afterwards the Defendant put his Cattle on the faid Waste called Alamore, by Reason whereof the Plaintiff could not enjoy his Common in so large and beneficial a Manner as he ought, Oc.

The Defendant pleads in Bar, and confesses that Sir William Child was Farmer of the Manor of Oxton Netherhall, and that the said twenty Acres were Copyhold and Parcel thereof; and he likewise confessed the Right of Common, as alledged in the Declaration, and the Grant of the twenty Acres to the Plaintiff; but pleads that the Archbishop of York, before the faid Grant made to the Plaintiff, was seised in Fee of the Manor

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Manor of Southwell, of which one Messuage and thirty Acres of Land, &c. was Parcel and Copyhold; and so lays a Prescription in the Archbishop to have Common in the said Waste called Alamore, for all his Copyhold Tenants of the said Messuage, and thirty Acres of Land; and that at such a Court held for the said Manor of Southwell, the aforesaid Messuage, and thirty Acres of Land were granted to one Robert Wasson in Fee, who was Father of the Desendant John Wasson, and to whom the same descended after the Death of his said Father; and that he entered, and so justified the Putting in his Cattle, &c. and averred it to be the same Cause of Action, &c.

The Plaintiff replied, and again averred the Prefcription in Sir William Child, and traversed the Pre-

feription in the Bar.

The Defendant rejoined and took Issue upon that Prescription, which was tried at the Assiss, and a special Verdict sound, that Alamore Waste was in the Forest of Sherwood; and that the said Messuage and thirty Acres of Lands, for which the Desendant prescribed to have Common, was within the Purlieus of the said Forest; and they sound that the Desendant had Right of Common there, &c. but whether such a Prescription to have Common in a Forest was good, or not, they lest to the Judgment of the Court, and so made a general Conclusion.

In arguing this special Verdict, the Counsel for the Plaintist objected, that the Prescription alledged in the Bar was ill; it being for a Copyholder to have Common in a Forest absolutely, without excepting the Fence-Month, and also for Sheep which are not commonable on a Forest, because they bite so near, that

the Deer may be starved.

But these Objections were not allowed, because there are Authorities in Point, that a Man may prescribe for Common for Sheep in a Forest, (viz.) 2 Cro. 155. W. Jones 285. Engleseild's Case; and likewise without excepting the Fence-Month; for it was so ad-

3 Lev. 98. judged in \* Trigg and Turner's Case.

But admitting the Prescription in the Bar to be ill for the Reasons before-mentioned, the very same Objections may be made to the Prescription set forth by the Plaintiff in his Declaration; for there he prescribes

# Copyhold Effate, what it is.

rescribes for Common in a Forest for Sheep, and without excepting the Fence-Month; so that if the Prescription in the Bar is ill for these Faults, the Prescription in the Declaration must be so too; and then the Plain-

iff can never have Judgment.

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orth he ribes Besides, the Prescription in the Declaration is ill for another Fault, because tis alledged by a Que E-sate in Sir William Child, who was only a Farmer of the Manor of Oxon; whereas it ought to be made in the Lord of the Manor in Fee, and all those whose Estate he had, &c. Time out of Mind, &c. had Common, &c. for their Tenants and Farmers of the aid twenty Acres, &c. the Desendant had Judgment. I Lutw. 81. Grammar versus Watson.

In Pleading Copyholders must alledge a Custom, and Freeholders must prescribe to have Solam & fer

paralem pasturam. 1 Lev. 268. 2 Lev. 178.

# Coppheld Effate, what it is.

A N Estate held by Copy of Court-Roll is an E-state of Lands or Tenements depending on a Manor, which by Custom therein, the Tenants within the Manor have held and enjoyed Time out of Mind, to them and their Heirs in Fee-simple, Fee-tail, or for Years, or Life, at the Will of the Lord, according to the Custom of the Manor, but Copyholds for Lives are most in Use at this Time; and where a Man doth purchase a Copyhold for three Lives, 'tis usually at fourteen Years Purchase, (viz.) Eight for the First, Four for the Second, and Two for the Third Life; the Exchange of a Life is one Year's Purchase, but if it be of a Woman's Life for a Man's, where she would have been entitled to a Widow's Estate, 'tis two Years Purchase.

F 2

Court-

## Court-Baron, of the Stile of the Court. and who may hold it.

#### (A)

\* 4 Inst. 268. 1. MY Lord Coke in his \* 4th Institutes treating of this Court, tells us, that a Court-Baron is the Court of the Lord of the Manor; that the Stile of it is Curia Baron' T. T. Ar. manerii sui pred', (the Name of the Manor being wrote in the Margin) tent' 20 die Octob' Anno, Gc. coram T. S. gen' seneschallo ibid, and that he had seen such Court-Rolls as ancient as the Reign of Edw. 1. only inflead of Caria it was Aula ibidem tent', because the Court was kept in the Hall of the Lord of the Manor.

4 Rep. 26. S. C. Admittance.

(C) 6. S. C.

Cro. El. 102. it was refolved, that every Manor confilts of Freeholders and Copyholders, and comprehends in Effect two Courts, the one a Court Baron for Freeholders, and in this the Suitors, (i. e.) the Freeholders are Judges; and the other Court is for Copyholders, and in that the Steward or Lord himself is Judge; and though the last is not properly a Manor in Law; because it wants Freeholders; as for Instance: If the Lord grants the Inheritance of all his Copyholds to T. S. by this Grant they are severed from the Manor, and by this Severance 'tis no longer a Manor in Law, for Want of Copyholders, of which a Manor must confift as well as of Freeholders; yet the Grantee may hold a Court, which he calls a Customary Court,

2. In Melwich and Luter's Case, he tells us, that

3. But this Resolution in Melwich and Luter's Case was about eight Years afterwards denied to be Law; and we are told that it was a strange Judgment, and that it was afterwards reverled upon a Writ of Error in the Exchequer-Chamber; and this is in a Case reported by Justice Croke, (viz.) the Manor of C. extended both to C. and D. in the last of which Places there were only Copyholders for Life, and no Freeholders; the Lord of the Manor levied a

for his Copyhold Tenants, and take Surrenders and

make Admittances, &c.

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ine, and suffered a Recovery of the Manor (excepting his Lands in D.) to several Uses; and some time afterwards he kept a Court-Baron in D. by W. his Steward, and granted a Copyhold to R. R. or Lise: Adjudged that this Grant was void, bequise D. was not a Manor; and in this Case, that some Melnich and Luter was cited, and denied by the Court to be Law. Cro. Eliz. 443. Bright versus ford.

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4. In a Quo Warranto for holding a Court-Baron in 2 Cro. 259. e Hundred and Manor of W. the Defendant plead- 1 Bulit. 34, , that T. S. was seised of the Manor and Hundred 57. S. C. W. of which the Manor of W. was Parcel and Manors. (A) lopyhold; and known as well by the Name of one S. S. C. lessuage and of seven Yard-Lands customary, as by he Name of the Manor, Cc, and that the laid T. S. ade a Lease of the Manor of W. to the Defendant, y the Name of a Messuage and seven Yard-Lands, c. O ea ratione, O virtute dimissionis pradict', he eld a Court-Baron within the Manor, &c. and upon Demurrer to this Plea the Plaintiff had Judgment; ecause a Quo Warranto being a Writ of Right, ought to be answered in Chief, which could not done by the Defendant, because of the Weakess of his Estate, it being Copyhold, and by Conquence he could not enable himself in his own light to hold fuch a Court, Tel. 190. The King erius Stafferton.

5. A Court-Baron is an inseparable Incident to a sal Manor, 'tis not a Court of Record, and 'tis alled a Court-Baron, because every Lord of a Maor was in sormer Days called a Baron; this Court sult be held by Prescription, for it cannot be created this Day, and it must be held at some Place within the Limits of the Manor, for if it be held ut of the Manor, 'tis void, unless there is a Custom to do.

6. The Lord of the Manor is chief in Authority, 4 Rep. 24. is Acts are good, tho' an Infant, or tho' outlawed 9 Rep. 49, in a personal Action or excommunicated; and tho' 50, 51. ut Tenant for Years, at Will, or by Statute-Mer- 1 Inst. 58. b. hant, he is Dominus pro tempore, and a lawful Lord

enders or Descents, to grant voluntary Copies of

antient Copyholds, &c. his Authority consists in punishing Offences within his Precincts, as for Nonperformance of Custonis, for Breach of By-Laws, &c. and in deciding Controversies about the Title of Copyholds within his Manor, where he may redress the fame as a Chancellor in his own Court.

### Court-Baron, befoze whom to be held. and of the Judge of the laid Court.

(B)

A S we rarely read of the Distinction between a Court-Baron, and a Customary Court, and that the Suitors are Judges in the one, and the Lord of the Manor or his Steward in the other, but in Melwich and Luter's Case before-mentioned, and that Case being denied to be Law, it may be difficult to affign a Reason why the Suitors should be Judges of

a Court-Baron.

2. For there is a Possibility that all the Suitors of fuch a Court, (i. e.) all the Freeholders, may be Wemen, whom my Lord Coke will not admit to be Judges; and I never yet could hear any tolerable Reason why Men, who owe Suit or Service to a Court, should be accounted Judges of that very Court; and yet we are told that there is a Writ in the Register, directed by the King sectatoribus Curia Baron', Gc. vobis mandamus, Gc. ad judicium reddendum.

\* 6 Rep. 11.

3. That Oracle of the Law tells us in \* Fentle man's Case, that in a Court of Pyepowders the Steward is Judge, and fo he is in a Court-Leet; that in Redisseism the Sheriff is Judge, and to he is in the Tourn; but that is by the Statute of Merton, cap. 3 + By Custom a but that in the + Hundred-Court, and in the Court Baron, the Suitors are Judges; but he gives no Reafon for it, which makes me think there is none for if there had, it could never have escaped his Ob iervation.

Steward may be Judge in the Hundred-Court. 1 Leon. 316.

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4. But it feems to be his fettled Opinion, that here may be a Court Baron of Freeholders only, and ithout any Copyholders; and in fuch Case the uitors are Judges, and the Steward is no more an a Register of their Acts; and that there may e a Customary Court of Copybolders only without any reeholders, and then the Lord of the Manor or is Steward is Judge; and in \* his Comment on \* 1 Inft. 58.a. ittleton, he tells us, that when a Court-Baron is f this double Nature, the Court-Rolls contain as rell Matter appertaining to the customary Court, to the Court Baron; but I believe very few Stewrds are acquainted with Courts-Baron of this double Nature.

5. 'Tis certain that, upon an erroneous Judgment iven in a Court-Baron, no Writ of + false Judgment + Postea (C) es, and the Party grieved hath no Remedy but in pl. 7. S. P. hancery, or by Petition to the Lord of the Manor, tho ought to relieve in such Case according to Concience, for he is the # Chancellor in his own Court; # Owen 63. nd if he is Chancellor, he is certainly Judge of the Court; and 'tis properly the Office of a Judge to re-

ieve and reform Errors.

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6. Sheriffs and Stewards are Officers known in the law, and fit as Judges of several Courts; but 'tis a Contradiction in Terms to fay, that the same Perons are Suitors and Judges at the same Time, and of he same Court; they are Words without any Meanng, or if they have any, 'tis difficult to be undertood; and as most of the Stewards in England begin heir Entries on the Court Rolls with the Stile of the Court, (viz) Caria Baron' T. S. Ar', Gc. which makes me think they are Strangers to what is called Customary Court; to I cannot help thinking but that they take themselves to be Judges of every Court-Baron where they prefide.

7. The Lord of the Manor made a Lease of his Court-Baron to two of his Copyhold Tenants for Two hundred Years, excepting his Demessies and Services; the Lessees kept Court, and took Surrenders, &c. Adjudged this was a good Lease, and that the Lessees might keep Court in order to take Surrenders, and admit Tenants. Cro. Eliz. 394. fack-

fon verius Neale.

8. Ac-

\* Cro. El.

8. According to the Resolution in Jentlemans Case before-mentioned, the Suitors are Judges in a Hundred-Court, as well as of a Court-Baron; this was Anno 25 Eliz. about five Years afterwards the Plaintiff brought an \* Action in B. R. for Costs un-96. Harwood der 40 s. given in a Hundred-Court, and declared ver Farborne. that the Court was held on such a Day, Ge. before the Steward secundum consuetudinem Manerii, &c. and upon a Demurrer to the Declaration it was objected. that the Steward was not Judge of that Court, but the Suitors; but adjudged that the Steward may be Judge of the Court by Cultom, and for the same Reason he may be Judge of a Court-Baron; and in the principal Case the Declaration was, that the Court was held before the Steward according to the Custom of the Manor. 1 Leon. 316.

Cro. Eliz. 791. S. C. by the Name

of Pill ver. Touers. See Godb. 49.

9. There is another Distinction in our Books, (but I think without any Reason) that where Pleas in a Court-Baron are held by Writ, then it must be before Suitors and the Bailiff of the Lord of the Manor; but where without Writ, then it must be coram sectato ribus only; and that a Prescription by the Lord of the Manor to have a Court-Baron within his Manor is void; because 'tis a Court incident to every Manor of Common Right; and that 'tis in vain to prescribe to a Thing which the Law gives to one of Common Right; this feems to be a tolerable Reason. Noy 20. Pell versus Towers.

10. In Trespass, &c. the Defendant justified the Taking, Oc. by Virtue of a Plaint levied in a Court Baron of T. S. coram W. R. hundredario & sectatoribu Curie, &c. secundum consuetudinem Curie in a Plea of Debt under 40 s. upon a mutuatus infra Jurisdictionen Curia, and that + Taliter process' fuit in the faid

† Taliter Court, that the then Plaintiff recovered; and there proceffum upon a Precept issued to the Desendant to levy the est is too Short Debt and Costs, by Virtue whereof he as Minister a Way of Pleading; for Curia took the Horse and sold it, que est eadem capting and traversed any other Taking; and upon a De all the Proceedings of an murrer this was adjudged an ill Plea, because it was inferior Court coram fectatoribus Curie without naming them. The must be set Jones 129. Garret versus Higby. forth at length,

because they are traversable; this being no Court of Record.

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11. It was adjudged in the Case before-mention-, as reported in 1 \* Leon. that the Steward of a \* 1 Leon. ourt-Baron might be Judge of the faid Court by 316. fom; and yet in another Case it was held, that Lord of a Manor cannot prescribe to hold a ourt-Baron before his Steward; it was admitted, at he might prescribe to hold a Court before his leward, but not a Court-Baron; because that must e held coram sectatoribus, and not before the Steward. te 2 Cro. 512, 582. † Armyn versus Appletoft.

† See 2 Cro.

Leon. 216. S. P. I Brown. 41. S. P. Godb. 68. S. P. T. Jones 23.

12. All the later Authorities are according to that udgment reported in I Leon; for in 1 Mod. 173. it was adjudged that a Man might prescribe specially o have a Court-Baron held before his Steward; nd in another Book it was adjudged that fuch a Court might be held before the Steward fecundum onsuetudinem Manerii, (which exactly agrees with he Report in 1 Leon) and \$\pm\$ there we are told that \$\pm\$ In Erish he Lord Chief Justice Vaughan was of that Opinion ver. Wells. T. Jones 23. . Jones 23. 1 Mod. 173.

13. But before the last Case, it did not seem to be material Objection against any Pleading, that the Court ought not to be held before the Steward; for n Replevin the Defendants made Conusance as Bailiffs to Sir John Stowell, and prescribed to hold a Court-Baron, Oc. twice every Year coram fenefchallo; now if this had been a Fault, 'tie fo very plain, that the Counsel for the Plaintiff would have made the Objection, (viz.) that the Court ought not to be held before the Steward, but before the Suitors; but there was no Notice taken of this Manner of Pleading by which we may conclude, that it was admitted on all Sides to be good; for the Question was only concerning a By-Law made at the Court. Cro. Car. 497. In the Case of \* Tintney ver- \* Antea 43. lus fames.

S. C.

Winch 30. S. C. March 28. S. C. W. Jones 434. S. C.

14. A Widow recovered her Dower of a Manor, Cro. Eliz. and had Copyholds for Lives assigned to her: Ad- 661. pl. 10. judged

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judged that she might keep Courts and admit Copy-hold Tenants.

2 Salk. 604. S. C. See the Pleadings in this Case in the Appendix, Court-Baron, pl. 14.

14. In a special Verdict in Replevin, the Jury found that T. S. was seised of the Manor of H. &c. in Fee, and that there was an ancient Court held there, twice in every Year before the Steward, &c. and that the Defendant was a Tenant of the faid Manor, and owed Suit to the faid Court: Then he fets forth, that a Court was held there on fuch a Day, &c. of which the Defendant had Notice, but did not appear there; for which Default he was prefented, Oc. and amerced, Oc. and distrained, Oc. and so made Conusance for Suit, &c. ad Curiam Manerii: The Question was, Whether the Court found by the Jury, which was a Court held coram seneschal-10, O'c. and the Court where the Plaintiff should have appeared, which was ad Curiam manerii, was the fame, or not; because Curia manerii must be intended a Court-Baron, which is incident to every Manor; but Curia tent' coram feneschallo, must be a Customary Court of Copyholders only, and no Freeholders, and can never be intended a Court-Baron, because as it was insisted, that Court is always held coram fectatoribus, &c. But adjudged, that though there are some Cases which prove a Court-Baron must be held before the Suitors, yet the later Authorities are otherwise; for in Fact, every Court-Baron is held besore the \* Steward. 2 Lutw. Tonkin versus Crocker.

\* See Co. Ent. 118. b.

570. b. Raft. Ent. 553. a. Winch's Ent. 1014.

Court-Baron, of Adions, Judgments and Executions in that Court, and for not appearing there.

(C)

1. THE Process in a Court-Baron is a Summons, Actachment and Distress infinite, till the Desendant appears, but the Goods distrained are not forseited,

court. Baron, of Adions, Judgments, &c.

rfeited, neither can they be fold by the Bailiff of the Manor, for the Distress is only in Nature of a ledge to enforce an Appearance; 'tis true at Common Law, where the Defendant is attached by his loods, and doth not appear, the Goods thus attached are forfeited, but in a Court-Baron' tis other-rise; all which was adjudged in the following Lase.

2. J. In Trover, &c. the Defendant pleaded that Yelv. 194, e was Bailiff of the Manor of H &c. and that at S.C.

Court-Baron held there on fuch a Day, a \* Plaint \* It must be vas levied against the Plaintiff, and that Process, under 40 s. rc. was directed to the Defendant, to distrain the Plaintiff to be at the next Court to answer the laid Plaint, by Virtue of which Process he did distrain he Plaintiff by his Goods; and because he did not ppear at the faid Court, the Goods became forfeitd to the Lord of the Manor, Oc. and upon a Denurrer to this Plea, it was adjudged, that Goods tould not be forfeited to the Lord of the Manor for not appearing at a Court-Baron, because the Distress is in Nature of a Pledge, to be kept safely by the Person distraining, till he whose Goods are distraind doth appear, and the Distress must be infinite till he appears; therefore the Defendant intermedling with the Goods after the Distress, was a Conversion thereof, and by Confequence Trover lies against him.

2 Cro. 255. Gomersal versus Medgate. 3. In Trespass for Taking his Goods, &c. the Defendant pleaded, that E.S. was seised in Fee of the Manor of H. Gc. and that in a Court Baron held there on such a Day, a Plaint was levied, Oc. against one Britton, for a certain Sum; who not appearing, an Attachment was awarded against him, secundum consuetudinem Curia, directed to the Defendant, being Bailist of the Court, &c. and upon a Demurrer to this Plea it was objected, that it was ill, for that the Process was irregular, it being an Attachment, whereas in a Court-Baron a Summons is the first Process, and not an Attachment: But adjudged that the Defendant having pleaded, that the Attachment was awarded Jecundum consuetudinem Curia, it shall be intended to be after the Summons; however, 'tis no more than Milawarding the Process, which shall not

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make the Officer guilty, where the Court hath an Original Jurisdiction of the Cause, as in the Case 2 Roll Rep. 493. Turbervill versus Trippet.

\* This must be by Custom. 4. Judgment was given in a Court-Baron, and a \* Levari facias awarded to the Bailiff, who by Virtue thereof, levied the Debt upon the Goods of the Defendant: Adjudged that the Bailiff could not fell them, in order to levy the Money without a special Custom for that Purpose. Noy 17. Try versus Burgh.

5. Every Person within the Manor may be sued in Debt or Trespass under 40 s. but not in Trespass Vi armis, because they cannot impose a Fine where Freeholders are Judges, and the Trial must be by Twelve; but if the Desendant in Trespass pleads a Freehold, the Court shall cease any farther Proceedings; and tho every Copyholder may be impleaded in the Court-Baron by Plaint, yet the Plaintist may remove it by Tolt into the County-Court, and from thence by Pone into the Common Pleas; and the Desendant may have a Recordari facias loquelam into the King's Bench or Common Pleas; and Execution is only by Distress and Impounding till the Party is satisfied.

6. In Trespass, &c. for Taking his Mare, the Defendant pleaded, that Sir J. S. was Lord of the Manor of Bedminster, in the County of Somerset, and so prescribed to have a Court there, and to make By-Laws, &c. and that at such a Court a By-Law was made, that every Commoner should pay 40 s. for depasturing his Cattle, where any Corn was standing or growing: Then he lets forth, that the Plaintiff had Right of Common, Gc. and that a certain Place called Knowles-Knap, &c. was fowed with Corn; and that the Plaintiff suffered his Sheep to depasture there, for which he had forfeited 40 s. that at fuch a Court, &c. this Offence was presented; whereupon the Defendant tanquam Ballivus Domini manerii, justified the Taking the Mare, &c. for the 40 5 Upon a Demurrer to this Plea it was adjudged ill; for in an Action of Trespass, a particular Authoruy must be set forth in the Pleadings, because the Bailiff cannot take the Thing ex officio; neither can he justify the Taking, if it had been per mandatum Domini, &c.

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r can atum mini, omini, because there must be a Precept directed to m by the Steward of the Manor for that Purpose; hich Precept must be set forth in the Pleading, and en he must alledge, that he tanquam Ballivus, &c. virtute pracepti, Gc. did take the Mare. But if is had been in Replevin, in such Case tanquam Balvus, &c. or per mandatum Domini, &c. had been ood, but 'tis not so in an Action of Trespass. 4 Mod. 77. Lamb versus Mills.

7. A Plaint was levied in a Court-Baron, and e Desendant was summoned to appear at the next ourt, Oc. the Steward came on the very Day, at late, and a little before Night, but held the ourt at Night; and the Summons being returned rved, and the Defendant not appearing, Judgment as given against him, and held good, tho' all was one at Night; and if it had been erroneous, the arty could have no Remedy by a \* Writ of falle \* Antea (B)

adgment, or otherwise, but only by his Petition pl. 5. S. P. the Lord of the Manor. Moor 68.

8. A Widow levied a Plaint in a Court-Baron, Antea 3. S.C. he being endowed of Copyhold Lands by the Cuom of the Manor, and thereupon the obtained adgment in Dower within the Manor, and \* Da- \* This is by ages to 50 l. for the Profits of the Lands from the Virtue of the leath of her Husband; yet she shall not have an Statute of ection of Debt for these Damages at Common Law, Merton. 20 ecause upon such Judgment, no Writ of Error, or H. 3. cap. 1. Writ of false Judgment lies; this is the Reason gien by my Lord Coke, in Shaw and Thompson's Cale. Rep. 30.

But Justice Crook, who reports the same Case tells Moor 410.

s, that an Action of Debt would lie in B. R. for S. C. by three piece Damages, and gives a very good Reason for it, Judges a-viz.) Because the † Court-Baron could not award gainst one t viz.) Because the † Court Baron could not award gainst one that xecution for so great Damages; 'tis true that Court an Action of an hold Plea only under 40 s. but yet the Damages Debt would o 50 l. are well affessed; for as they can hold Plea not lie. f the Land, so they may give as much Damages as † Placita de he Party is damnified. Cro. Eliz. 426. Shaw versus catallis & homplon.

debitis, &c. quæ fum-

nam 40 s. excedunt, secundum legem & consuetudinem Angliz fire revi Regis placitare non debent. 2 Inft. 312.

#### Cultonis of Manois, and Giants

9. A general Warning of a Court within the Manor is sufficient; for if the Copyholder himself is not resident there, his Tenant may send him Notice that the Court is to be held on such a Day. I Leon. 104. Case 139.

# Customs of Manors, and Hrants of Co. pyholds, good.

#### (A)

A Copyhold Custom is a Law not written, but established by Use Time out of Mind within a Manor, for it must be Time out of Mind, because a Copyhold cannot now be made.

These Customs must be,

1. Reasonable.

2. According to Common Right.

3. Upon good Consideration.

4. Compulfory.

5. Certain.

6. Beneficial to the Lord or Tenants?

\* 6 Rep. 60.

1. And first they must be \* reasonable, for if 'tis not grounded on a reasonable Cause, 'tis void. Cro. Eliz., 725. and therefore a Custom, that the Tenants of a Manor shall not put their Cattle into a Common after the Corn severed till the Lord hath put in his Cattle, is void, because the Lord may never put in his Cattle, and then the Tenants will lose the whole Profits of the Common.

2. The Custom must be according to Common Right and Justice; therefore if the Lord will prescribe to have a Sum of Money of every Copyholder for keeping a Court in his Manor, this is void; because he ought to keep Court graits to administer Justice, but he may have a Sum of Money for keeping an extraordinary Court, which is usually called a Purchase-Court, for the Benefit of a particular Tenant, for this is according to Justice.

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3. The Custom must be upon good Consideration, and therefore if the Lord will prescribe to have a Penny for every Person who passeth over a Bridge within his Manor (which he repairs) this is good, because the Consideration is so; but if it had been for a Penny for passing in the Highway within his Manor, it had been void.

4. All Cultoms ought to be compulfory, and not left to the Liberty of the Tenants, whether they will

observe them, or not.

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5. They ought to be certain, because an incertain Thing cannot be continued Time out of Mind.

6. And lastly, they ought to be beneficial to the

Lord, or to his Tenants.

7. The Grantor is sometimes the Lord himself and 4 Rep. 26. fometimes the Copyholder; if 'tis the Lord, then his Grant is voluntary, as absolute Owner of the Lands, and fuch Grant he may make at any Place out of the Manor; if the Grant is by a Copyholder, then it must be made by Surrender, and in such Case the Lord is only an Instrument of the Conveyance and not a Conveyor, as he is in a voluntary Grant; and all Persons who are capable of Grants at Common Law may be Grantees of Copyhold Estates, and may be admitted by Attorney if the Lord consents, for that is necessary, because the Tenant mult do Fealty, which cannot be done by Attorney.

8. A customary Manor, &c. may be granted by Copy, and whatsoever concerneth Lands or Tenements, as Underwoods, Tithes, &c. But Things which do not lie in Tenure are not grantable by Copy, as Rents, Commons in gross, or an Advomson in gross, because these cannot be held by any Services; but Commons or Advowsons appendant may pass by Copy, and so may a Fair appendant to a Manor, by Reason of the principal Thing to which 'tis ap-

pendant.

9. Custom of a Manor was, that the Lord might Godb. 140. grant Copyholds in Remainder with the Affent of the S P. Tenants, and not otherwise, and that Copies granted Goulds. 102. in other Manner should be void: It was objected S. P. that this was a void Custom, because Copyholders are in Judgment of the Common Law only Tenants at Will; and 'tis unreasonable that the Lord of the Manor

Manor should be controuled by their Will, in granting Estates by Copy. But the better Opinion was, that the Cultom is good, because it might have a lawful Beginning, and might be grounded upon the Reason of the Common Law, that a Remainder should not vest without the Assent of him who had the particular Estate. 3 Leon. 226.

I Lcon. 4. 2 Lcon. 152. 3 Leon. 59. Moor 94. Godb. 130. 2 Brownl. 208.

The Opinin in Dycr, 270, denied to be Law.

10 In a special Verdict in Ejectment the Case was, Custom of a Manor for the Lord to demise by Copy, for one, two or three Lives, and also to grant Copyhold Estates for Life in Reversion; the Lord granted a Copyhold for Life to T. S. and afterward he married, and then he granted the Reversion of the fame Copyhold Lands to T. H. for Life, and foon after died; then the first Copyholder for Life died, and T. H. the Copyholder in Reversion entered, and made a Lease to the Desendant warranted by the Custom; afterwards these very Lands were assigned to the Widow of the Lord for her Dower, who brought an Action, and recovered, and made a Leafe to the Plaintiff, who brought an Ejectment against the Leffee of the Copyholder; and adjudged that this T. H. the Copyholder in the Reversion shall hold the Lands discharged of the Dower, for the' her Husband married before he granted the Reversion, yet the Copyholder was in by Virtue of the Custom,

\*8 Rep. 63. which is \* paramount her Title of Dower. in Swain's . 16. Cham versus Dover.

Cafe S. P.

4 Rep. 24. S. P. Cro. Eliz. 66. S. C.

Moor 147. rew's Cafe. S. P.

11. Custom, O'c. for the Lord of the Manor, Sir Peter Ca- who was only Dominus pro tempore, to grant Copyhold Estates for Lives in Reversion. A Widow, who was Tenant in Dower of the Manor, granted a Copyhold to T. S. for Life, habendum after the Death of T. H. who was a Copyholder for Life in Possession, and who furvived the Widow: Adjudged, that this Grant to T. S. in Reversion was good, tho' it was not W. Jones 41. executed in the Life-time of the Tenant in Dower.

Hutton 65.

S. C.

Moor Cafe 369.

1 Roll. Abr. 499. Gay versus Rey. 12. Tenant at Sufferance granted a Copyhold to T. S. for Life, before his Lessor entered and evicted him; this was adjudged a void Grant; but Tenant at Will, who hath an Interest, may grant it.

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12. In a special Verdict in Ejectment, the Case Postea Forfeiwas, A Copyholder of Inheritance fold all his Co- ture in genepyhold Lands by a Deed of Rargain and Sale (but ral.(A)5.S.C. not in Court) to the Leffee of the Manor, who entered and took Possession of the Copyhold Lands; then the Copyholder died, and the Homage presented that he died feised, Ge. whereupon his Son and Heir was admitted, and afterwards furrendered to the Use of the Plaintiff, who brought an Ejectment: Adjudged, that tho' a Copyholder cannot convey his Estate to a Stranger otherwise than by a Surrender, and an Admittance of the Surrendree, yet he may grant it to the Lord of the Manor himfelf out of Court by \* Bargain and Sale, because the Cu- \* By this Confrom to convey by Surrender, is not between the pevance the Co-Lard and Tenant, but between the Tenants them- pyhold is extinselves; and in this Case the Lessee of the Manor ha- guisbed, for in ving admitted the Heir, that amounts to a Grant, Respect to the because he had a good Title before. Winch 66. Haj- Lord a Copylet versus Hanson.

bolder may determine his

Estate by any A.F., shewing his Will to hold it no longer by Copy. Jones 41.

14. 'Tis a good Custom, that the Tenants of the Manor ought of themselves to choose a Beadle to collect the Amerciaments and the Lords Rents; and that if they chose one who is not sufficient, the Tenants shall answer for him; and if the Beadle thus chosen shall refuse, he shall be amerced, and that the Lord may distrain him till he hath found Sureties to perform his Office, tho' the Tenants are to answer 1 Roll. Abr. Tit. Cuftom E. 9.

15. Cultom of a Manor, that every Copyholder Postea (D) for Life, might in the Presence of two Copyhold 16. Tenants, appoint who shall have his Copyhold after his Death, and without any Surrender to his Ule; and that these two Copyholders might set a Fine, so as it was not less than usually had been paid upon an Admittance; this was adjudged a good Custom. 4 Leon. 238. Ball's Cafe.

16. So a Custom for a Copyholder to name his Trees, S. C. Successor, is good, and that if the Lord refuse to Postes pl. 26. admit the Nominee, then the Homage by Custom S. C. may let a Fine; and upon Payment or Tender there-

of he shall be admitted. 1 Brownl. 132. Rolls versus

Mason.

17. If the Lord refuse to admit such Nominee up. Moor 842. on Tender or Payment of the Fine, he may be com-S. C. 1 Roll. Rep. pelled by a Decree in Chancery. 2 Cro. 368. Ford 125, 195. verius Hoskins. 2 Bulit. 337.

S. C. An Action on the Case will not lie against the Lord. Postca (D)

pl. 13.

4 Rep. 24.

480, 844.

18. Every Copyhold Estate must be Parcel of a Manor, and demited or demifable Time out of Mind, and nothing can be granted by Copy but what is Part of a Manor, and therefore \* Tithes can-\* Cro. Eliz. 814. not be so granted, because they cannot pass by Copy Moor Cafe of Court-Roll, but by Grant; but if they had been 844. granted Time out of Mind by Copy, they may pals. Moor Cafe Underwood may be granted by Copy, and a Fair,

Market, and Tithes, if there is a Cultom for fuch

Grants.

19. In Account brought by the Heir of a Copyholder for the Rents and Profits of his Copyhold Lands, during his Infancy, the Defendant pleaded a Custom of the Manor of H. that the Lord, &c. might affign one to take the Profits of a Copyhold Estate, descended to an Infant during his Nonage, and to the Use of such Assignee, without giving any Account; and this was held a good Custom. I Leon. 266.

Cro. Eliz. ver. Brook. 1 Leon. 143. S. C. Owen 67. S. C. contra 2 Bulit. 195. 3 Bulft. 61. judged.

Cro. Eliz.

323. S. C.

20. Tis a good Custom, that whereas T. S. was 203. Farmer seised in Fee of the Manor of H. and all the Tenements of the Town of H. are held of that Manor, and so prescribe to have a Bake-house Parcel of the Manor, and maintrined at his Charge; and that this Bake-house was sufficient to bake Bread for all the Inhabitants, and for all Passengers thro' the Town; and that the Bread there baked had been used to be fold at reasonable Prices; and that no other Person cited to be ad- in the Town had used to bake Bread to fell to others; this is a good Custom, tho' it restrains other Men to exercise their Trade in a certain Place. 8 Rep. 121, 125. In the Case of the City of London.

21. In Trespass, &c. it was adjudged, that where the Cultom of a Manor was to grant Copyholds for

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2 the one, two, or three Lives, that a Grant to the Husband for Life, and to his Wife during her Widowhood, if the survive, is within the Custom; for 'tis a Grant during her Life, if the please; 'tis true, this is a less Estate than an Estate for Life; but if a greater Estate is warranted by the Custom, a Grant of a less Estate must be within the Custom. 4 Rep. 29. Down verfus Hopkins.

22. So where the Custom was, that the Lord of I Leon. \$5. the Manor might grant Copyholds in Fee; it was ad- 56. In Kemp judged that he might grant them for Life or for Years, ver. Carrers because these are lesser Estates, and included in the S. P. Fee which is greater. Cro. Eliz. 373. Stanton versus

Barnes.

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23. Where the Custom of a Manor was, that Copyholds might be granted for three Lives, and it was granted to Three for the Lives of Two; this is within the Custom; for there is no Inconvenience to the Lord, and 'tis not a greater Estate than for three Lives; for 'tis only for two Lives, which is less than warranted by the Cultom. 1 Roll. Abr. Copyhold. L. 3. Venn versus Howell.

24. The Lord of a Manor, after he was married, granted feveral Copyholds for Life, according to the Cultom of the Manor, and died, his Widow shall not avoid such Grants in a Writ of Dower; for though they were after the Commencement of her Title, yet the Custom, by which those Grants are e- \* Moor 8124 stablished, was long before. 2 Brownl. 208. and there S. C. Dyer 270. b. was denied. See 8 Rep. 63. in \* Swaine's 1 Brown!. Cafe.

25. A Diffeisor or any other Person who hath a de- 4 Rep. 24. feafible Title to a Manor, granted an Ellate by Copy, Poph. 71. as if the Lands had been forfeited or escheated to him; or, as if the last Copyholder had died without Heir, fuch Grants shall not bind him who hath the Right after he hath recontinued the Manor; but Admittances made by a Diffeifor to the Heir of a Copyholder, are good, because those are of Necessity.

26. Tis a good Cultoin, that a Copyholder of Inheritance may cut down Trees and fell them at Pleafure. 1 Roll. Abr. Tit. Custom E. 16. + Glascock ver- + 1 Leon. 238. lus Peche; but 'tis not so for a Copyholder sor l ise, S. C. except the Custom is, that he may name his Succeffor.

1 Brownl. ceffor, then he is quasi a Copyholder in Fee. Cro. Car.
132. 221. Ranles versus Mason.

2 Brownl.

95, 192, 202. Postea Forseiture, &c. by what Ads a Copyhold shall not be forseited. (B) 2. S. C.

27. The Custom of a Manor was, that a Copyholder should not alien his Estate which he held by Copy of Court-Roll without the Licence of the Lord; which Custom was proved by ancient Precedents in the Court-Rolls, and by several Seisures where Alienations were made without such License: It was adjudged, that tho the Usage had been otherwise for eighty Years last past, yet such Usage shall not destroy this Custom; so where the Custom was that a Copyholder may make a Lease of his Lands for three Years without the License of the Lord, and without paying a Fine; in such Case, though the Lord can prove that some Copyholders have paid Fines when they made such Leases, yet these Fines taken by Encroachment shall not be allowed to break the Custom. Mich. 25 Eliz. Howard's Case.

2 And. 125. S. C. by the Name of Parnham ver. Bowes.

28. A Custom, that all Sales of Lands within the Manor shall be presented by the Tenants in open Court; and if a Feossiment is made and not presented, &c. the Livery and Seism shall be void: This is a good Custom, though it was objected, that by the Feossiment an Interest is vested in the Feossee, which shall not be devested by the Custom; but adjudged, that the Livery is only to give Notice of the Transmutation of the Possession, and therefore a Custom which addeth more Solemnity and Notice, is good.

5 Rep. 84, 85. Perriman's Cafe.

29. Custom, &c. that if a Copyholder suffer the Buildings to be out of Repair, that he shall be amerced, and that the Lord of the Manor may distrain the Cattle of such Copyholder for the said Amerciament, and likewise the Cattle of any Undertenant Levant and Couchant on the Copyhold Lands: Adjudged a good Custom, and that the Amerciament is a Charge on the Land, and not only personal to the Copyholder; and for that Reason the Cattle of any Stranger may be distrained. March 161. Thorn versus Tyler.

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20. So a Custom of a Manor, that if a Tenant rescue or drive away his Cattle from the Land when the Lord is coming to distrain, that in such Case he shall be amerced by the Homage, and that the Lord 1 Roll. Rep. may distrain for it, is good. Godb. 135.

31. A Custom which goes to deprive or bar a Copyholder of his Estate, must be taken strictly; but where it goes either to make or maintain his Estate, it shall be taken favourably. Cro. Eliz. 879.

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32. A Custom of a Manor, that Lands within the See Hutchinfaid Manor of which the Owner is seised in Fee, son ver. Jackshall pass by Surrender, is good; and therefore ion. where the Plaintiff declared that he was seised in Fee, Fc. secundum consuetudinem manerii, and being so feiled did furrender the same, Ge. this was adjudged a good Declaration. 3 Bulft. 230. Wassell versus Telton.

33. In a special Verdict in Ejectment, the Cufrom of a Manor was found to be, that a Copyholder might make a Lease of his Lands for twenty one Tears, paying the Value of three Years Rent to the Lord; and that if the Leffee died within that Term, then the Residue of the said Term should go to his Heir at Law, paying to the Lord a Year's Rent for a Fine; and that upon every Assignment of the said Term, the Assignee should pay the like Sum, (viz.) one Year's Rent in the Nature of a Fine; and that whosoever had the Residue of the said Term might by the Custom of the Manor renew it for twentyone Years, paying three Years Rent for a Fine; and this was adjudged a good Custom. 2 Cro. 671. Page's Cafe.

34. Custom of a Manor, that a Feme Covert might Godb. 14, 15. devise her own Lands to her Husband, or to any other S. C. Person whatsoever, but not without his Consent; Skipwith's and in a special Verdict in Trespass, this was adjudg- Case, but othered a good Cultom, but that it ought to be alledged wife reported. in Pleading by Way of Excuse, (viz.) that quelibet Postea (D) famina usa suit devisare, &c. and not by Way of Ju- pl. 14. S. C. Stification, (viz.) that every Woman poterit devisare, Moor 123. S. C. reported by Godb. 14, 15. by the

Name of Skipwich versus Sheffield.

1 Lev. 172, 293. S. C. 1 Vent. 88. S. C. reported by the Name of Simpson per. Quinley.

35. A Copyholder in Fee, held of the Manor of Tinmouth, had Issue two Daughters and died; and in a special Verdict in Ejectment, the Jury found the Custom of that Manor to be, that the eldest Daughter shall have the whole Copyhold for her Life; and that after her Death, the next Heir Male to the Father shall have it to him and his Heirs, who can derive a Descent from the Males, exclusive to the Females; and that if there is no fuch Heir Male, it shall escheat to the Lord : The Widow entered after the Death of her Husband, the having a Widow's Estate by the Custom, and then the eldest Daughter died, and afterwards the Widow died; Adjudged, that this general Custom for the Males of the collateral Line to inherit, exclusive of the Females of the right Line, may be good ratione loci, O'c. and that the furviving Daughter was within this Custom; for the eldest Daughter in this Case shall not be only primogenita filia of the Father, but the eldeft at the Death of the Mother; because by the Custom she derived her Estate from her Husband. Sid. 267. Newton versus Shaftoe.

36. The Custom of a Manor was, that any Copyholder, &c. might make a Writing in the Nature of a Letter of Attorney, to two Copyhold Tenants of the said Manor to surrender the Copyhold after his Death; and a Copyholder of Inheritance having made such a Writing, and soon after dying, this Custom was held good, and that his Death was no Revocation of the Writing; and that this is not like an Ordinary Letter of Attorney which becomes void by the Death of him who made it; for 'tis strengthened by the Custom which makes the Authority survive.

Sile 422. Roby verfus Twelves.

37. But in the Case of Wallis and Bucknall, which is reported in the same Book, it was otherwise adjudged, (viz.) A Copyholder of Inheritance did execute a Letter of Attorney to two Persons, &c. thereby giving them Authority to surrender his Copyhold Lands after his Death to certain Uses therein named, according to the Custom of the Manor; and this was adjudged a void Custom, because it gave a Man Power to convey lands against the Rules of Law for conveying Copyholds; for that must be either by a Sur-

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ender into the Hands of the Lord of the Manor, or nto the Hands of two Copyhold Tenants to the Use f the Will of the Surrenderor, and which must be xecuted in his Life-time. Stile 311. Wallis versus Bucknall.

38. Custom of the Manor of St. Mary Ottory in 1 Mod. 77. Devon, that if a Copyholder who dwelt ten Miles S. C. rom the Manor, and would come to the Court I Vent. 167. there and give 8 d. to the Lord, and 1 d. to the Stew- S. C. ird, he should be discharged from Suit to Court for Reported by one Year next ensuing; and in Replevin the Desen-the Name of Isaac versus lant avowed the Taking, &c. for not doing Suit to Ledginghe Court; the Plaintiff in Bar to this Avowry re- ham; and the plied and fet forth this Custom, and that at such a Reason given Court he was ready to pay the Money, and tendered in these Books t to the Lord, and that both he and his Steward re- is, that 'tis uled it : Adjudged a good Cultom. Sid. 261, 361. Custom which creates the Portbury versus Ledgingham. Suit to Court;

and therefore Cuftom may restrain it,

39. A Bill was exhibited to discover several an- Hudson ver. tient Customs in a Manor between the Lord and his Fletcher. Tenants respectively, and for a Commission to exa- Cha. Cases mine Witnesses to perpetuate their Testimony; the 114. Defendant pleads, that the Cultoms are not triable in this Court; and demurs, for that all the Tenants of the Manor are not made Parties; but the Plea and Demurrer were held insufficient; and the Plaintiffs had Liberty to amend their Bill, and to add such of the Tenants who will give them Letters of Attorney to be made Plaintiffs to their Bill, and the rest of the Tenants to be Defendants.

40. Custom of a Manor, &c. that the Homage every Year may chuse a Surveyor to see that unwholsome Victuals were not fold within the Limits of the Manor; and in Trespass (the Plaintiff being a Butcher) he de- 2 Mod. 56. clared against the Defendant for taking away his S. C. Flesh; the Defendant by his Plea brought himself within the Custom, and so justified the Taking prout ei bene licuit; and upon a Demurrer to this Plea, it was objected against the Custom, for that it gave the Defendant too great a Power to feife and deltroy other Mens Goods: But it was adjudged a good Cu-

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flom, because Eating corrupt Victuals might occasion Sickness and Diseases; and a Custom to prevent Evils is better than a Custom to punish those who commit them; and as to the Power given to the Surveyor by this Culton, if he mifuse it, and upon an Action brought against him, if he justify under this Custom, and 'tis found against him, in such Case, he must recompence the Plaintiff in Damages. 1 Mod. 202. Vaughan versus Alwood.

41. Custom of a Manor in the North of England, to grant Estates for Lives, by a Writing sealed, or by a Writing figured and not sealed; and a Custom for the Tenants to cut Oaks growing on their Copyhold Lands, to repair the Buildings, &c. and in Trespass for cutting and carrying away two Oaks, the Defendant justified under this Custom; and upon a Demurrer to this Plea it was objected, that it was a strange \* Custom which could warrant the Passing Chief Juffice, Estates by Writings not Sealed; I do not find that the Case was adjudged, but the Reporter tells us, that it

Estates after that Manner. 2 Luim. Rep. 1390. Fletcher

\* Per Holt Copyhold Estates are sub- was generally allowed in the North to pass Copyhold ject to the Rules of Law, versus Fisher. and will not

pass by such Words in a Conveyance which are improper to pass other Estates, unless there is a Custom to warrant it, for that may and often doth distinguish them. 3 Salk. 99. In Fisher and Nichol's Case. See (D) pl. 7.

Mod. Cases 63. S. C. 3 Salk. 181. S. C.

42. Custom of the Manor of Tregoan, of which the Bishop of Exeter is Lord, to grant Copyholds for two or three Lives, and the Life of the Survivor, babendum successive as they are named in the Grant, and not otherwise; and a Grant was made to T.S. and his Assigns for the Lives of B. and C. and of the said T. S. It was objected in a special Verdict in Ejectment, that this Grant was not warranted by the Custom, because T.S. had the whole Estate; and the other Two were named only by Way of Limitation, and had no Manner of Interest; it was admitted, that where Custom warrants a greater Estate, it warrants likewise a lesser; but then the Estates must be of the same Nature; for a Custom to lease for three Lives will not warrant a Lease for Five hundred Years, though in a legal Estimation a Lease for Years is a less Estate than an Estate for Life; but in the principal Case it was adjudged, that by this Grant no greater Estate passed than what was allowed by the Custom, but rather a less; for by the Custom a Grant may be made for three Lives, and this is only a Grant for one Life. 1 Salk. 188. Smartle versus Penhallow.

43. The Continuance of fifty Years is requisite to Cro. Eliz.

make a Customary Estate demisable by Copy, but 351.

forty Years will not do it. 3 Leon. Case 158.

44. Where Copyhold Lands are escheated to the 2 Roll. Rep. Lord, or otherwise forseited to him, in such Case he 236. may grant the same by Copy of Court-Roll, reser-

ving a greater Rent than formerly; but a greater Rent cannot be referved upon the Admittance of a

Tenant.

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45. Every Copyhold is Parcel of the Demesses of the Manor, for at first, and originally, it was demessee Land, and there are three Manner of Copyholds besides Old Aster, which signifies a Chimney, Slue, or Fire hearth; and such Copyholds which had antiently a House on them, were called Old Aster Lands; and those who had newly Houses built on them, were called New Aster Lands; but the other are Terra nativa, which is also called Bond-Lands, because held by Villains. (2) Customary Lands, which are held by free Tenants. (3) Mensales, which are also called Dominica, because the Lord's Table is maintained thereby.

46. T. S. who had taken a Copyhold Estate for I Vern. How the Life of himself, and for the Lives of his two Brothers, versus How.

the Life of himself, and for the Lives of his two Brothers, died, leaving Issue one Son, whom the Uncles suffered quietly to enjoy the Estate, during his Life, but he being dead, and E. G. having administered, they (the Uncles) disturbed her in the Possession, who exhibited her Bill to be relieved, as having the Title of the first Taker, who had paid the Fine upon the Admittance, the other two Lives being in the Nature of Trustees for him; and it was decreed for the Administratrix against the Uncles, tho there was no Custom in the Manor, that the first Taker might surrender; nor was there any Custom that the Copies should run successive. See I Ch. Rep. 310. Clarke versus Danvers. S. P.

47. The

47. The Plaintiff was Tenant to Mr. Thynn, and Awbry versus contracted with his Steward for a Copyhold Estate for two Lives, and paid 200 l. down, and was to pay the Residue on the Taking up his Copy, which he was to do within three Months, and then to name his two Lives; a Court was held, the three Months expire, and the Plaintiff neglected to name the Lives and take up his Copy: Mr. Thynn was murdered, and the Manor came to the Lord Wey. mouth by Virtue of a Remainder in a Settlement, fo that he was not bound by this Agreement; but yet Mr. Thynn's Executor was decreed to refund the 2001.

### Customs of Manoes, and Gents of Co. pyholos, not good.

(D)

Sec antea (C). Placito 33.

I And. S. C. Antea By-Larvs. 44. S. C.

USTOM of a Manor, that the greatest Part of the Tenants, appearing at any Court to be held in and for the Manor, may make By Laws for the better Government of themselves, &c. and that a By-Law so made should bind all the Tenants, and that at fuch a Court, &c. a By Law was made, that no Tenant of the Manor should put into such a Common any Steer being a Year old or more, under the Penalty of 6 d. for every Offence, for which it should be lawful to distrain; and in Replevin the Defendant justified the Taking, &c. by Virtue of this By-Lar; and upon a Demurrer to this Plea, it was adjudged that this Custom was void, for 'tis against Common Right to restrain a Man from putting in commonable Cattle where he hath Right of Common; but if the Cultom had been that no Tenant should put in a Steer before such a Day, such Custom had been good; because 'tis for the better Government of the Common, and doth not wholly deprive a Man from the Right of Common. 1 Leon. 189. Erbury versus Latton.

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4 an a the i Tena luag 2. In Trespass for putting his Cattle in R. the Defendant justified, for that the Locus in quo, &c. is Parcel of the Manor of Hay, and a Custom there for the Lord of the Manor to have Common in the Lands of his Tenants for Life, or for Years, when they lie resh, &c. and upon a Demurrer to this Plea, the Plaintiff had Judgment, because a Custom for a Lord of a Manor to have a Common against his own Grant, is void in Law. Palm. 212. White versus Sawyer.

3. Custom, that where a Copyholder surrenders Cro. Eliz. to another, and names no Estate, that the Lord may 395.

grant it in Fee, is a good Custom.

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4 Case, Ge. for that the Plaintiff was possessed of Custom to an antient Water-mill, and that the Cultom within bring Corn to the Manor of Bolton, in the Parish of H. is that every the Lord's Tenant of the faid Manor living in an antient Mel- Mill. uage to which twenty Acres of Land do appertain, Cro. Car. did always bring his Corn yearly growing on those 418. S. P. twenty Acres to the said Mill to be ground, so long I Vent. 97. as he lived in such Messuage, so brings the Desen-S. P. dant into the Custom, and avers, that he did not bring his Corn to grind in that Mill; upon the general Issue pleaded, the Plaintiff had a Verdict, but the judgment was fet afide; because tis against the Nature of a Custom to apply it to one particular Tenant within a Manor; but a Copyholder may apply a \* Custom in a Parish to a particular Place therein, be- \* Therefore caule he cannot prescribe. I Lutw. Rep. 126. Nichol- where a Custom of the Vill fon verfus Smith.

of Peplow was set forth to be, that all the Occupiers of a Close there had used to maintain a Fence against another Close; this was held ill, because a Custom in a Parish cannot be applied to a particular Place in that Parish, unless in the Case of a Copyholder; but he may do it, because he cannot prescribe. I Vent. 97. Postca pl. 17. S.P. Jenkins ver. Vivian. Poph. 201. S.P.

5. Custom of a Manor held of the King in Fee-Farm, that all the Tenants, &c. shall grind all their Corn and Grain baked and brewed in their Houses, at the Lord's Mill, and not elsewhere; and that the Desendant had built another Mill, but not within that Manor, at which Mill several of the Tenants, &c. did grind, &c. and therefore the Plaintiff exhibited a Bill in the Exchequer to have the new Mill demolished;

demolished; but it was denied, and the Bill was dismissed; for any Man might build a Mill on his own Land, if out of the Manor; but if the Owner or Tenant of the New Mill should persuade the Tenants of the Manor to grind their Corn there, in such Case they may be prohibited by a Decree. Hardres 174. Green versus Robinson, and 184. Mayor of

Scarborough versus Skelton. S. P.

6. There is another Case in the same Book which was thus, (viz.) Custom of a Manor held of the King in Fee-Farm, for all the Copyhold Tenants to grind all their Corn and Grain, baked and brewed in their antient Copyhold Meffuages at a Copyhold Mill within that Manor, and not elsewhere, of which Mill the Plaintiff was Tenant for Life; and that the Defendant had built a new Mill within the Manor, (in the last Case the Mill was built without the Manor) at which several of the Copyhold Tenants did grind their Corn, &c. decreed that this new Mill was within the Custom, and that the Tenants were bound by it, so that they could not grind elsewhere, if the Toll was not excessive, or that their Corn could not be ground in a convenient Time for their Use; for tis a personal Prerogative vested in the King, to compel all the Tenants of his Manor to grind their Corn at his Mill, which no other Lord of a Manor can do, but by Virtue of a Custom, Prescription, or Tenure for that Purpose; and it was adjudged in this Case, that the Custom doth not go to the Estate, but to the Thing it felf, (viz.) to the Mill, into whole Hands soever it comes. Hardres 177. White versus Porter.

Fine for Alienation. 7. Custom of the Manor of Monckton in Ken, that after every Alienation of any Parcel of the Land held of that Manor, the Lord thereof shall have a Year and half's Rent for a Fine; and in Replevin the Desendant justified under this Custom, and laid another Custom to distrain for the Fine; and upon Demurrer to the Cognisance, it was adjudged for the Plaintiss, that this was an unreasonable Custom, it being to have so great a Fine for the Alienation of the least Part of an Acre of Land, and there is no Apportionment to be made of the Fine after the Alienation; and it may be a void Custom to claim?

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fine upon an Alienation for Life, because the Tenure of the Lands is not altered by fuch an Alienation, for the Reversion continues as it was before he land was aliened. 2 Vent. 134. Holland versus

Lancaster.

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8. A Copyholder of Inheritance made a Letter of Grants of Co-Attorney to Two to furrender his Copyhold Lands pybold in Pofafter his Death, &c. according to the Custom of the fession, Rever-Manor: Adjudged this is a void Custom, because sion or Retis to convey Lands against the Rules of Law in con- mainder. veying Copyholds, for that must be by Surrender See (C) pl. executed in the Life time of the Surrenderor. Stile 311. 29. S. P. Wallis versus Bucknall.

9. But in the same Book there is a contrary Resolution, where the Custom of a Manor was for a Copyholder to make a Writing in the Nature of a Letter of Attorney to two Copyhold Tenants to furrender after his Death; this was held a good Custom, because the Death of the Copyholder was no Revocation of this Writing; for it is not like an ordinary Letter of Attorney which becomes void by the Death of him who made it, but 'tis strengthened by the Custom, and 'tis that which makes the Authority furvive. Stile 422. Roby versus Twelves.

10. A Widow demanded Dower of a third Part of the Manor of H. by the Name of 100 Messuages, &c. and the was endowed of the third Part of the Demesnes and Services, and afterwards the granted a Copyhold to T. S. Adjudged that this Grant was void, because she did not demand the Thirds of the Manor,

but the third Part of 100 Messuages, &c. by which

Demand and Endowment she had not a Manor; and therefore the could make no Grant of a Copyhold.

M. 29 Eliz. Speck's Cafe. 11. A Custom for a Lord of a Manor to grant Copyholds in Reversion, but not without the Consent of the Tenant in Possession, is a void Custom. Golds. 103. Plimpton versus Dobinett.

12. The Lord of a Manor cannot grant a Copyhold in Reversion, unless there is a Custom so to do. March 8. but the Lord of a Manor for Life, or any particular Person having an Interest in the Manor, may grant Copies in Reversion, altho not executed in the Life-time of the Grantor. Moor 147.

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13. Tenant for Life of a Manor granted a Copy. hold in Reversion to T.S. for Life, and soon after. wards he died; then the Copyholder in Possession died, and the fucceeding Lord of the Manor granted the same Copyhold to J. H. it was held that this Grant of a Copyhold in Reversion was not good; but if it had come into Possession whilst the Lord of the Manor who granted it had been living, though he was but Tenant for Life of the Manor, it had been good. Moor 95.

14. Custom of a Manor for the Lord to grant Co. pyholds for three Lives, who granted to T. S. for Life, Remainder to that Woman he should marry for Life, Remainder to the first Son of their two Bodies for Life: Adjudged that the two Remainders are void Grants, and the Estate to T. S. for Life only good.

Moor 677. Webster versus Allen.

Antea (A) pl. 15. S. C.

15. Custom for a Copyholder to nominate his Succeffor, who upon Tender of a Fine in Court ought to be admitted by the Lord of the Manor; and in an Action on the Case brought against the Lord, Oc. for refusing to admit the Plaintiff upon such Tender, it was adjudged it did not lie, but that the proper Remedy was in Chancery. 2 Bulft. 336. Ford versus Hopkins.

Pleading of Cufloms, not good. Godb. 143. S. C. 2 Brownl. 218. S. C. 3 Leon. SI. S. C. 22. S. C. Wife, pl. 7.

\$. C.

16. Custom of a Manor, that every married Woman, who held Lands of the faid Manor, poterit divilare her Copyhold Lands of Inheritance to her Hujband, and furrender the same, Gc. and accordingly a Feme Covert surrendered her Lands, &c. to the Ule of her Will, and then devised them to her Husband, Oc. who was admitted; then she died, and he being in Possession, the Heir at Law of the Wife Antea(A)pl. brought an Action of Trespass against him: Adjudged that this Custom was not good, for several Husband and Reasons; first because it was incertain what Estate the might devise, whether for Life, for Years, or in Fee; for 'tis only faid poterit devisare, Oc. and 'tis unreasonable that she should by her Will devile Lands to him, because the Will of the Wife is the Will of the Husband in a legal Understanding, and to he would convey Lands to himself; besides, it this Custom had been good, 'tis not well pursued, because 'tis to devise and surrender, &c. which must be at one Time, and this was done at several Times; besides the Custom is laid, that every married Woman poterit devisare, which is ill, for it ought to be potest devisare; because Customs and Prescriptions must be laid in Things done, and not in Things which may be done. Godb. 14, 15. Skipwith's Case.

17. In Trespass, &c. the Defendant pleaded a Cu-Poph. 201. from in the Manor of H. that every Tenant thereof Jenkins ver. baberet a Way over the Place where this Trespass was supposed to be done, &c. and upon a Demurrer to this Plea, the Plaintiff had Judgment, because the Parish can-Defendant did not set forth, that the Place where, not be applied &c. was within the Manor, besides the Pleading is ill; to a Close in for the Custom is laid, that every Tenant baberet a the same Paway; it should have been, that all the Tenants us rish. see suppositive and direct Assirmation, that they usually Trespass the positive and direct Assirmation, that they usually Trespass the Defendant pleaded in

Bar, and laid a Custom in a particular Parcel of Land without saying in any Manor, Vill or Parish, and this was held ill; besides it should be positively alledged by an Usage in Fast, and not that in such a Place talis habetur consuctudo, &c. 2 Lev. 1317. Berisford ver. Bacon.

18. Custom that the Lord of the Manor shall have the best Beast of every Person dying within his Manor, is naught; because such a Custom could never have a reasonable Commencement between the Lord and a Stranger, though it might between the Lord and his Tenants. Cro. Eliz. 725.

19. A Copyhold escheated, and in the Hands of Cro. Eliz. the Lord several Years, may be again granted by Co- 699.

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MY Lord Coke defines a Deodand to be when any moveable Thing inanimate, or a Beat which is animate, causeth the untimely Death of reasonable Creature without the Will, out Default

of himself on the Land, but not on the Sea.

2. Now in such Case, the Goods and Chattels of the Deceased, upon an \* Inquisition thereof found by the Coroner's Jury, do belong to the King, or to the Lords of those Manors, who have Grants there of enrolled in the Crown-Office; but as to those Good which belong to the King, he appoints his chief Al. moner to dispose thereof to the Poor, or to employ in other charitable Uses; and where the Almoner, of the Lord of the Manor gives a Discharge to any Perfon who hath fuch Goods in his Possession, this is a good Discharge in Law.

3. 'Tis probable, that the Original of these Det dands was from a Notion which our Ancestors had of Purgatory; for when a Person came to a sudden and untimely Death without having Time to confels, and be absolved by the Priest, and to receive the extream Unction; that Thing which had been the Occasion of his Death was given to God, from whence tis called a Deodand; but it was a Gift to the Church to be distributed by the Priests in Charities to Almsinen to pray the Soul of the Deceased out of Purgatory.

The Rule in this Case is expressed in this old Verse, fl. Omnia que movent ad mortem sunt Do-

danda. But neither this Rule, nor that Reason of a Det dand are now observed; for if a Man is killed by the Wheel of a Coach drawn by fix Horses, the Ju-Ty will find that only to be the Deodand which was the immediate Cause of the Death; and that is the Wheel; neither is the Wheel fold, and the Money distributed to the Poor, but the Lord of the Mand hath it to his own Use; so that whatever is forfelted as a Deodand, is feiled by him, and converted to list Use, as soon as 'tis found by the Coroner's Inque't how,

\* And therefore it cannot be claimed by Prescription; and the Fury which finds or prelents the Death, ought to find and appraise the Deodand. 4 Rep. 109. In Foxly's Cafe.

how, when, and in what Manner the Person was killed, and the Value of the Thing which was the Caule of his Death.

5. A Boy under fourteen Years old was killed by a Fall from a Cart, and that was held to be a Deodand; but if he had been killed by a Fall from an Horse, it was held that the Horse was not a Deodand; probably the Reason may be, because a Boy under the Age might not have Discretion to ride a Horse, and so he and not the Horse might occasion his Fall; but the Law is now otherwise, and Justice Twisten was of Opinion, that there was no more Reason for this Distinction than to cut off the Thumb of a Cut-Purfe which formerly was Law, but not now. Raym. 208.

6. A Man riding a Horse in the River Trent, fell & Roll. Rep. off and was drowned; the Coroner's Inquest found 23 S. C. that his Death was caused per Cursum aque, and the Poph. 136. Court was of Opinion, that the Inquisition was S. C. good; and that the Horse was not a Deodand; for it appeared that the Man did not ride out of his Depth, but was carried along by the Violence of the Water which was the immediate Caule of his Death. 2 Cro.

483. Lord Chandos's Cafe.

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7. A Cart met a loaded Waggon on the Road, and endeavouring to pals by was overturned; and the Man who was in the Cart fell before the Wheel of the Waggon which run over him, and killed him; the Chief Justice Pollexfen, and another Judge in the Circuit to whom this Matter was referred, were of Opinion according to the old Rule, that the Cart, Waggon, Loading, and all the Horses were Deodands; because they all moved to the Death of the Person; the Chief Justice at first only doubting whether the Cart was a Deodand; but he afterwards remembered this Case, f. A Man riding in a River was thrown by his Horse, and carried by the Stream to a Mill, and there he was killed by the Wheel; and it was adjudged, that both the Horse and Wheel were forfeited; but if he had been thrown from his Horse by the Violence of the Stream, then the Horse had not been forfeited. 1 Salk. 220. the Case of the Lord of the Manor of Hampsted.

Raym. 97. S. C. Sid. 204. S. C.

8. A Man ringing a Bell in the Steeple of the Charch of, &c. was hanged with the Rope; the Question was nhether the Bell was a Deodand; it was argued, that it was not, because it was sastned to the Freehold, and it was given to God already; and for that Reason two Judges were of Opinion, that it was not a Deodand, but the Case was not adjudged,

1 Lev. 136. The King versus Cross.

9. It was found by the Coroner's Inquest, that the Wheel of a Forge, &c. moved to the Death of T. S, and upon a Motion in B. R. to stay the Process from seising it, because it was fixed to the Freehold, and Parcel of it, as the Wheels of a Mill, or as Millstones are, and a Mill is a Thing well known in the Law, and so are all the material Parts of it, as the Wheels, Millstones, &c. and therefore if one of the Millstones is taken down to dress, and the Owner devises the Mill whill the Stone is out; yet it shall pass as Part of the Mill; a Bell cannot be a Deodand, &c. so the Process was stayed. Mod. Cases 187. The Queen versus Wheeler.

10. By the Statute 4 & 5 Willi. cap. 23. 'Tis enacted, that all Persons who have Grants of Deodands enrolled in the Cronn-Office, and had the same allowed, shall plead them to any Inquisition returned by a Coroner; and that any Person, &c. who now have or shall have such Grant from the Crown of Deodands, Felons Goods, and other Forseitures, need not inrol more of them than only to express the Grant of such Goods, for which be shall pay 20 s. after the Inrolments; and no such Grantee shall be compelled to plead the same in the Court of B. R. to an

Inquistion.

If after such Involment, Process shall Issue against the Grantee of such Deodands, &c. he shall forfeit and pay to the Party grieved 51. to be recovered in any of the Court

at Westminster, &c.

The Clerk of the Crown shall not incur any Penalty for issuing out Process against any Person who shall not upon every Purchase or Descent, or Devise, inrol, and plead the same.

Dower. See Husband and Wife.

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#### Entailing Coppholos.

BOUT the later End of the Reign of See Cro. El. Oueen Elizabeth this Question was debated, 308, 907. (viz.) Whether Copyhold Lands could be entailed, and Moor 753. in \* Heydon's Cale the Lord Chief Baron Manwood Godb. 358. held that they could not; his Reatons were, because \*Anno 26 Eby the Statute + de Donis, &c. (by which Estates- liz. 3 Rep. 7. Tail were first created, for at Common Law all E- † 13 Ed. 1. states were Fee simple conditional) 'tis enacted, that Westm. 2. Voluntas Donatoris observetur in Charta, by which Word Charta, it must be intended that such Lands may be entailed which pais by \$ Charter or Deed; \$ Godb. 367. but Copyholds do not pals by Deed, therefore they Royden or are not comprehended in that Statute, for they pass Reeves ver. by Surrender and Admittance of the Surrendree; and Maliter. great Part of the Lands in England being Copyhold, Cro. Car. 131, it would be very inconvenient if they should be en- 411. tailed; because such Entails cannot be barred by a 2 Roll. Rep. Fine or Common Recovery; and by Consequence the 383. Owners of such entailed lands could not dispose W. Jones 360. them for Payment of Debts, or for Advancement of their Children or Families, unless the Lords of Manors should consent that a Forfeiture might be committed by the Tenants in Fossession, and afterwards to make a new Grant of the Copyhold Tenements to them; therefore this Statute did not extend to Copyholds; and this was the Opinion of the Court at that Time.

2. And at the fame Time it was objected, that the Statute co-operating with the Custom, might empower a Copyhelder to entail his Copyheld Lands, to which the Chief Baron answered, that if the Statute de Donis, &c. doth not extend to them, Custom cannot; because a Custom cannot commence after the Statute, for that must be Time out of Mind; whereas the Statute must be made within Time of Memory.

3. About nine Years afterwards, it was resolved in \* Gravenor and Tedd's Cafe, that where there is a \* 4 Rep. 23. Cultom to grant Copyholds to a Man and his Heirs,

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#### Entailing Coppholds.

that by the same Custom it may be granted to him and to the Heirs of his Body; because this last being a less Estate, it must be included in the Custom to

grant a greater.

4. Afterwards it became a Question, that admit ting Copyholds might be entailed, what should bea Proof of fuch Entails; for it was held, that if Lands have been usually granted to Men, and to the Heirs of their Bodies, this was no Proof of an Estate-Tail; because that might be a Fee-simple condicional, as it was at Common Law; but it was generally agreed, that where Remainders have been limited over upon such Estates, and injoyed accordingly; or where the Issues in Tail have avoided the Alienations of their Ancestors, or where they have recovered in Formedons in Descender; these are Proofs of an Estate-Tail.

5. At last this Point was settled, that as a Custon without the Statute could not create an Estate-Tail of a Copyhold; so the Statute without a Custom could not do it; but that the one co-operating with the \* Moor 188. other, might make an Estate-Tail; and therefore in Anno 27 El. \* Hill and Morse's Case it was adjudged, that where

a Copyhold is entailed, it must be by a special Cu-

Stom to to do. Postea pl. 9. S. C. So that it being no longer a Doubt whether Copyholds might be entailed, the next Question was, how, and in what Manner such Entails might be barred or discontinued; and this appears in the following

6. If. A Plaint may be levied in the Court of the Lord of the Manor in the Nature of a real Action, and a Recovery may be had in fuch Plaint against the Tenant in Tail, and this shall be a \* Discontinuance 753. Oldcott to the Estate-Tail; for such Plaints being warranted by Custom, 'tis reasonable and incident, that they should make a Discontinuance. 4 Rep. 23. Dell verlus Rigden. 1 Brownl. 121. Hill versus Upcheare. S. P.

7. In a special Verdict in Ejectment, the Cale was, that Copyhold Lands were demisable in Fee, or in Tail, or for Life, and that T. S. being seised thereof in Tail, Remainder to R. R. in Tail; the faid 7.5. fuffered a Recovery thereof in the Court of the Manor, and afterwards died without Iffue; and the Jury

Moor 637.

S. P.

Sid. 314. S.P.

Cro. Eliz. 372. Moor 358. S. C. \* Moor 637,

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found that there was not any Custom in the said Manor, for Tenants in Tail to suffer Recoveries, &c. it was adudged that this Recovery did not bind the Remainder-Man in Tail; because a Recovery in the very Nature of it is not to bind without a Recompence in Value; and in this Case the Tenant in Tail who suffered the Recovery cannot have any Recompence in Value from the Common Vouchee; for if he should, then the Lord of the Manor by such a Conveyance would lose his Fine upon the Admittance; for the Tenant would hold his Land as a Copyholder without Grant or Admittance by the Lord; and this is contrary to the Nature of a Copyhold. Cro. Eliz. 391. \* Clunn versus Peas.

\* Deal ver. Rigdon. S.P.

Postca Fines. (A) pl. 6. S. C.

8. And yet in Moor 358, it was held that a Recovery against Tenant in Tail without any Voucher shall make a Discontinuance. See Cro. Eliz. 380, 391. S. P.

9. A Surrender was made to the Use of the Surrendree in Tail with several Remainders over likewise in Tail: Adjudged that a Recovery shall not bar this Entail without a special † Custom † 1 Lev. 136. so to do. Moor 188. Hill versus Morse, or Lane ver- S. P. sus Hill.

Raym. 164.

it was adjudged, that as a Copyhold might be entailed by a ‡ special Custom so to do; so likewise it ‡ Cro. Eliz. might be barred by a Common Recovery, and that by 148, 391, a special Custom, a Surrender might bar the Issue in 392, 717.

Tail. Moor 637. Church versus Wiatt.

11. Now as to a Surrender this Case happened, Surrender. (A) (viz.) In Ejectment for Copyhold Lands held of the 41. S. C. Manor of Isleworth; it was adjudged that there can be no Estate-Tail of a Copyhold without a special Custom to warrant it; and that where such an Estate is warranted by Custom, \* a Surrender thereof \* 1 Roll. b) the Tenant in Tail in Possession makes a Disconti-Rep. 48.

nuance, and shall put the Islue in Tail to his Forme-Warne ver. don; for he shall take the Estate subject to all the Sawyer. S.P. 2 Brownl. 43.

Reyner ver. Powell. S. P. 9 Rep. 105. S. P. in Margaret Podger's Cafe,

Inconveniencies of an Estate-Tail, and to which fuch an Estate is subject at Common Law. Cro. E.

liz. 717. Erifb verfus Reeves.

12. But then fuch Surrender muft be likewise war. ranted by Custom, and to maintain such Custom, it ought to be fet forth, that a Plaint had been brought upon fuch a Surrender, and Judgment obtained up. on that Plaint. Poph. 128. Lee verfus Brown. Moor 637. S. P.

Poph. 128. S. C.

13. The Case last mentioned was thus, I. A Co. pyholder who was Tenant in Tail furrendered to the Lord of the Manor, that he might do therewith what he pleased; and he regranted it to the Copyholder: Adjudged this was not any Discontinuance; because the Lord had still the Reversion, but a Surrender to the Use of a Stranger had made a Discontinuance. I Roll. Abr. fo. 633.

14. In some Places the Method of barring Estates-Tail of Copyhold is for the Tenant to commit a Forfeiture either by making a Leafe not warranted by the Custom, or by a voluntary Denying to pay the Lord's Rent, or to do Snit or Service to his Court; for which Forfeiture the Lord enters and feises the Lands, and grants them over to another

by the Consent and Appointment of him who committed the Forfeiture.

Style 490. Pilkington Pl. 17. S. C.

15. The Lord Chief Justice Rolle was of Opinion, that fuch a Forfeiture could not be warranted ver. Bagshaw. by any Custom, because by the Seisure the Copyhold Estate was quite destroyed; and 'tis at the Lord's Election, whether he will grant it again by Copy of Court-Roll, or not.

16. But by the later Authorities this Custom is allowed to be good, and that fuch a Forfeiture by Cultom is in Nature of a Surrender, or of a Common Recovery, for which the Case following is a full

Proof.

17. In Ejectment for Copyhold Lands held of the Manor of Wakefield in York bire, it was admitted at a Trial at Bar, that by the Custom of that Manor, Copyholds might be entailed; and that the Custom to bar fuch Entails is for the Tenant in Tail to commit a Forfeiture; and then after three Proclamations made, the Lord of the Manor may seise for such Forfeiture, and Fee, and the to th chaf of t

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nor, to mit ons iich urc, Forfeiture, and regrant the Lands to the Copyholder and his Heirs, by which Means he hath an Estate in Fee, and by Consequence the Estate-Tail is gone; and that another Custom to but those Entails is, for the Tenant in Tail in Possession, to make a Surrender to the Purchaser and his H irs, and then such Purchaser is to commit a Forseiture, for which the Lord of the Manor is to seise, and to regrant to the Purchaser, and by this Means the Issue in Tail are barred, tho the Tenant in Tail did not join. Sid. 314. Pilkington versus Stanhope.

18. Bill in Equity against a Lord of a Manor Ash ver. Rugbrought by a Remainder-Man, after an Estate-Tail gle. 1 Vern. spent of a Copyhold, to be relieved against a Reco- 367.

very suffered in the Court-Baron above thirty Years past, and that he might be decreed to fuffer the Plaintiff to bring a Plaint in Nature of a Writ of Error or Falle Judgment in the Court-Baron; the Defendant who claimed the Estate under this Recovery demurred, and the Demurrer was allowed; for it would be of dangerous Consequence to give any Relief in such Case, and contrary to Equity to draw the same in Question in this Manner, because thro the Ignorance of the Stewards it often happens, that all the legal Requisites to a Common Recovery of Freehold Lands are not observed in Recoveries of Copyhold Estates; and yet the barring of Copyhold Estates by Recoveries in such Courts, having obtained in many Manors, it would shake many of them if they should be impeached upon Niceties in Form, tho the Errors affigned in the Bill in this Recovery were such as would have been gross Errors in a Common Recovery of a Freehold Estate.

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Earay.

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67. S. C.

S.P. Hutt.

#### Effrap.

THE ancient law of King Ina concerning Estrays was thus, f. Diximus de ignotis per coribus ut nemo habeat sine Testimonio hundredi vel hominum decenna, (i. e.) Suitors to the Court-Leet.

2. An Estray is any Beast not wild, found within any Lordship or Manor, and not owned; and which if tis cried according to Law in the Two next Market-Towns, on two Market-Days, and not claimed within a Year and a Day, then it belongs to the Lord of the Manor. Pecus quod elapsum e custode Cam. pos pererrat ignoto Domino.

3. And because many Lords of Manors are entitled to Estrays, either by Prescription or Grants from the King, I have thought it requifite to mention such Cases, which have been adjudged concern-

ing Estrays.

4. In the Description before-mentioned it appears, that an Estray must be claimed within a Year and a Day, but in all that Time it must not be used; therefore it hath been adjudged, that where an Horse was an Estray, the Desendant could not justify the \*Winch 124. \* Fettering it to another Horse; for if 'tis taken a-Pledwell ver. way or elcapes, the Owner cannot have an Action against him from whom it was taken; because by its Coming as an Estray, and being seised as such, the Property is develted out of the Owner: And it after fuch Seifure it escapes into another Manor before the End of the Year, he who enters to take it in that Manor will be a Treipasser. 1 Brownl. 236, Harvey verfus Blacklock.

5. In the Case last mentioned it was held, that where the Defendant justifies for an t Estray, he + See Cro. must alledge that it came into the Manor as an E-Eliz. 716. How to claim stray; and in this Case it was held, that the # Using an Estray, and it within the Year is an Abuser, for it ought not to be bow to justify done or put to any Manner of Use. Godb. 150. Taythe Taking it, lar versus Jones. and what to

# Noy 119. S.C. be allowed for keeping it, and bow to claim a Property.

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6. In Trespass for taking a Gelding, the Defendant justified as Bailiff of the Manor of H. whereof T. S. was leised, Oc. and had Waifs and Estrays; and that he took the Gelding in the faid Manor as an Estray, Yelv. 96. S.C. and kept and detained the same till after it was refeised by the Plaintiff; who replied, that the Defendant seised the Gelding 14 Octob. 2 Fac. and that afterwards, (viz.) 16 Offeb. 2 Fac. before the Re-seisure, the said Defendant norked the Gelding by Riding and Drawing: And upon a Demurrer to this Replication the Plaintiff had Judgment, because the Desendant had it only as a Pledge, and that there was no Difference as to this Matter between an Estray and a Distress; for in both Cases the Possession is not de jure, but only by an Act in Law: 'Tis true, when Cattle are pawned, the Perfon to whom they are pawn'd may use them; and the Reason is, because he hath a special Interest in them 2 Cro. 148.

by the Act of the Owner himself. 2 Cro. Bag ham 1 Roll. 673.

versus Goddard.

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7. In Trespass, &c. for Taking his Horse; the Defendant pleaded, that one T. S. was Owner of the Horse, and it strayed out of his Possession, and came to the Hands of the Plaintiff; and that afterwards this Defendant, by the Command of the faid T. S. and within a Year after it estrayed, demanded the Horse of the Plaintist proferendo ei Satisfaationem, who refused to deliver the Horse, and thereupon the Defendant took it, &c. the Plaintiff made a frivolous Replication, to which the Defendant demurred: And upon arguing the Point in Law, it was adjudged, that the Owner of an Horfe, or other Cattle which are Eftrays, may feife them where-ever he finds them, without telling the Marks, or proving the Property to be in him, which may be done at the Trial, if the other Side think fit to contend it; and that as to the Manner of Pleading in this Case, the Participle proferendo Satissactionem is a direct Affirmation of the Tender of Amends; and tis like Warrantizando vendidit, which hath been held good: And that a Tender of Amends generally, without thewing the particular Sum, is good, because the Owner of the Estray is no Wrong-doer; and 'tis almost impossible for him

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See Co. Ent. 40, 170, (B) Raft. Ent. 168.

to know how long his Horse had been in the Plaintist's Possession, or how much would make him Satisfaction for his Keeping. 'Tis true, 'tis otherwise in Trespass, for in such Case a Sum certain must be tendered, because the Desendant is supposed to be a Wrong-doer; and for that Reason the Law puts this Difficulty upon him. 2 Salk. 686. Henley versus Walsh.

8. The Plaintiff prescribed for Estrays as to his Manor of H. belonging; and that on such a Day an Ox coming as an Estray into his said Manor, he seised it, and that the Desendant did take and drive it away from thence; upon Not guilty pleaded, the

Plaintiff had a Verdict. 2 Cro. 513.

9. If the Owner of an Estray doth not claim it within a Year and a Day, in such Case, it being duly cried in the next Market-Towns at any Time within the Year, the Goods are forseited to the Lord of the Manor; so 'tis likewise in the Case of a Wreck at Sea, but there the Year and the Day shall be accounted from the Seisure; for tho' the Property of a Wreck is vested in the Lord before the Seisure, yet till then, and till he takes it into his Possessino, the Owner cannot tell of whom to claim it. 5 Rep. 106, 107. In Sir Henry Constable's Case.

Execution of Copyhold Lands. See Acts of Parliament extending to Copyholds.

Extinguishment of Copyholds. See Forfeitures in general,&c.

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HIS is where one lays violent Hands upon himself, and is milfully the Occasion of his \* He forfeits own Death, in which Case he \* forfeits all his Goods to the King; and because several Lords of all his Goods Manors are entitled to such Goods by Grants from real and perfonal which he the King, therefore I have treated on this Subject : bath in his And in the first Place I thall mention, that the Per-own Right, fon who is guilty of this Offence must be of the and all fuch Age of Discretion, the Act must be Voluntary, Death Chattels real must ensue within a Year after the Fact; and the Person which be bath must be compos Mentis at that Time; otherwise he in the Right of bis Wife. incurreth no Forfeiture of his Goods. or jointly with

ber; but then he must be found Felo de se by the Oath of twelve Men before the Coroner Super visum corporis. 4 Lev. 8. contr. 3 Inst. 59.

He forfeits also Bonds and Things in Action which he hath solely, and all entire Chattels in Possession; but not any Lands of Inheritance, because he was not attainted in his Life-time; nor the Goods and Chattels which he hath as Executor or Administrator: All which Goods are forfeited as asoresaid, immediately upon committing the Fact. 1 Lev. 8.

And the Reason why the King shall have them is, because of the Breach of the Peace and the Loss of a Subject. Plowd. Com. 261.

2. Therefore, if a Man who is Non Compos giveth himself a mortal Wound, and becomes of sound Memory before he dies; yet because the original Cause of his Death was whilst he was Non Compos, he shall not forfeit his Goods; for the Death must have Respect to the original Act, which was the Wound, and that was given when he was not in his Senses. I Rep. 100. In Shelley's Case.

3. The Forfeiture in this Case is of all his Goods and Chattels which he had at the Time of the Stroke given, or at any Time since, for it shall relate to that Time, and not to the Death of the Party.

4. But no Forseiture incurs till Conviction, which must be by the Coroner's Inquest super Visum corporis,

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and then, and not before, the Lord of the Manor will be entitled to the Forfeiture by Matter of Record; for which Reason such Goods cannot be

claimed by Prescription.

5. But if the Body cannot be found, so that the Coroner cannot take any Inquisition Super Visum Corporis, then the Justices of Oyer and Terminer, and all other who have Power to enquire of Felonies. may take a Presentment of it, for 'tis Felony; and this will entitle the King, or the Lord of the Manor to the Forfeiture; but 'tis \* traversable by the Executor or Administrator of the Felo de fe, tho' an Inquisition taken before the Coroner is not after 'tis returned and filed. Sid. 90. 1 Vent. 278. contra. Nejther can there be a Melius inquirendum granted, but 1 Vent. 182, where there is a plain and manifest Misbehaviour in

3 Inft. 55.

352.

the Coroner. 6. Therefore where an Inquisition was taken before the Coroner, and he returned that T. S. was Felo de Je; and upon a Motion in B. R. for a Melius inquirendum, the Party producing several Affidavits, that the dead Man was Non Compos Mentis, and that the Coroner was partial in executing his Office, having refused to take the Evidence then ready to prove him Non Compos, yet the Melius inquirendum was denied, because this Inquisition is traversable; and therefore it was removed into B. R. by Certiorari, by the Administratrix of the Deceased; and there she suggested that she was aggrieved by it, and by that Means the Validity of the Inquisition came in Question. T. Fones 198, Ripley's Cale.

7. So where upon an Inquisition the Coroner returned Non Compos, a Melius inquirendum was denied, because there was no Affidavit of any indired 3 Mod. 238. Proceedings, either by the Coroner or Jury; neither the King ver. was there any Incertainty in the Inquisition. 3 Mod.

Bunny. S. P. 80. Hetherfall's Cafe.

See the Pleadings in this Cafe in the Appendix, Felo de fe.

8. Information against one Sutton, setting forth, that Elizabeth Lapworth, late of Sow in Warwickhire, at Sow aforesaid, became Felo de se, (and shewed in what Manner) prout per quandam inquisitionem, Oi, apparet, which is ill; for first the Information should set forth the Fact, and that an Inquisition anor

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was taken before the Coroner upon the View of the Body, and then fet forth the Substance thereof, prout patet, &c. he ought to set forth the + Inquisition at ! Therefore large, for 'tis that which entitles the Party to the where a Per-Forseiture, Gc. then it set forth, that the said Sut- son was Felo ton, late of Pailton, owed the said Elizabeth Lapworth de se, and af-80 l. prout patet by a Bond; this likewise ought to came a genebe alledged politively, (viz.) that Sutton was bound ral Pardon. in a Bond; for if he should deny the Debt, he can- by which all not plead that he is not indebted modo & forma, for Felonies were his Plea is Non eft factum; then it proceeds and pardoned exavers, that Sutton had not paid the 80 l. to the faid cept Murder; Elizabeth Lapworth in his Life-time, unde actio accre- and aftervit to the King, O'c. and thereupon the Attorney Ge- wards an Inneral prayed Process against Sutton, who came and quisition was pleaded in Bar one Indenture made by King Car. I. taken by the to Sir Simon Clerk, under the Seal of the Dutchy, &c. Sheriff, and he per quod Testatum existit, &c. that the King granted the Felo de se to the faid Sir Simon the Court-Leets of the Manor died poffeffed of of Brinklow, &c. nec non bona & catalla felonum i- a Term for bidem acciden, and this was for thirty-one Years, Years then to which Term was still in Being, and now vested in come, which Dorothy Clerk as Executrix of Sir Simon, and avers was worth that Pailton was, and is a Member of Brinklow; and 100 l. it was that the faid Dorothy demanded the Money, and the adjudged that Desendant Sutton paid it to her, & boc parata eft ve- it was parrisicare; and so prayed to be discharged, Ge. and doned, becanse upon a Demurrer to this Plea it was adjudged for nothing vefted the Plaintiff; first because the King's Grant was in the King pleaded by a Testatum existit, when it should have found; which been politively alledged that the King concessit; in this Cafe then the Grant is \* de bonis & Catallis felonum, by being after which the Goods of one who is Felo de fe will not the Pardon, is pals; and for this Reason chiefly Judgment was discharged by given against the Defendant. I Saund. 273. the King it. Sid. 150. versus Sutton. The King ver. Ward.

\* And yet a Pardon of all Felonies will discharge the Forseiture of Goods of a Felo de se. See Toome's Case. See Plowd. Com. 143. S. P.

9. Toomes obtained a Judgment against one E- Sid. 167,264, therington for 2000 l. and afterwards hanged himself, S. C. and then his Administrator brought a Scire facias I Lev. 120. S. C.

See the Pleadings in this Case in Felo de se. pl. 20.

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against the said Etherington, to shew Cause why he should not have Execution on that Judgment, who pleaded in Bar, that after the Judgment obtained, Toomes banged himself, and to was Felo de fe; and that, upon an Inquisition taken before the Coroner Super visum corporis, it was found, that he was Fell de se, pront patet per Inquisitionem, &c. by Reason whereof the faid 2000 l. was forfeited to the King, &c. The Plaintiff replied, that by the Act of general Pardon, Anno 12 Car. 2. cap. 11. all Felonies and Forfeitures were pardoned, so that the 2000 l. was discharged from any Forseiture for this Offence, and made the usual Averments; but upon a Demurrer to this Replication Etherington had Judgment, because by the Return of the Coroner's Inquest, the Debt was vested in the King, and not revested by the Pardon in the Administrator, without a Writed Restitution; then the King brought the like Scire facias, and Etherington pleaded the same Plea, Oc. and upon a Demurrer to the Plea Etherington had Judgment against the King, because the Debt was released by the Pardon, which being a hard Case, the Plaintiff brought a Writ of Error in Parliament, but it was never argued. I Saund. 361. Toomes verfus Etherington.

and took his Bond for the Repayment of the Principal and Interest in the Name of the aforesaid Toomes; and upon a Bill in the Exchequer, Sir William Hix was relieved against the King, upon the Statute \* 33 H. 8. cap. 39. this being not the proper Money of Toomes, but a Trust in him for Sir William Hix.

'tis enacted, of Toomes, but a Trust in him that in all Ac- Hardres 196. Hix versus Comper.

tions of Debt accreaving to the King upon Attainder, Outlawry or Forseiture, it shall be sufficient to show generally, that the Party unto whom such Debt did be long, did on such a Day and Year give it to the King, without alledging the particular Circumstances.

11. One Salway drowned himself in a Pond, and the Coroner's Inquest super visum corporis found him Non Compos; and that on such a Day and Hour, he threw himself into a Pound, & per abundantiam aqua ibidem suffocas' & emergis' fuit, which is insensible,

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insensible, because the Word Emergo signifies to come out of the Water: But adjudged that suffocatus suit carries the Sense of the Sentence, and its sufficient without the other. 3 Mod. 100. The King versus Salway.

12. The Coroner's Inquest sound, that T. S. &c. wilfully, seloniously, &c. and as a Felo de se, with a Knise, Value, &c. which he held in his right Hand, cut his own Throat, & see seight side occidit; it was objected that it should have been murdravit; it was admitted that that Word is necessary in an Indistment for Murder, because there are Degrees of Killing; as Murder, Manslaughter, &c. but there is no Degree in Killing ones self; besides 'tis a Word necessary in an Indictment, because Clergy is excluded by it: But this Inquisition was quashed, because the Wound was not described, neither was it alledged to be mortal, nor that he died of the Wound.

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6. S. C. Godb. 268. S. C. Noy 41. Yelv. 1. S. P. 2 Cro. 101. Whitton ver. Williams.S.P. 3 Miod. 226. S. P.

Manors. (B) I. OU from of a Manor that upon the (A) Death of a Copyholder, his Heir shall pay sucha Fine as shall be reasonably affested, and that he shall come to the next Court to be admitted; and if not, then after three Proclamations made for that Purpole at three several Courts, the Lord might seise the Copyhold Lands as forfeited; in this Cafe it was found that a Copyholder, &c. died, that his Death was presented at such a Court; and it was likewise presented, that T. S. was his Heir, and that three Proclamations were made at three Courts, &c. but he did not appear at either of those Courts to be admitted; whereupon the Lord seised for a Forseiture; it was likewise found, that T. S. she Heir was beyond Sea, and that afterwards having Notice of the Death of his Ancestor he returned to England, and tendered the Fine to the Lord, &c. And in Ejectment it was adjudged, that the Heir being beyond

(A) Fines due to the Lord of the Manor by his Co-Co.Lit. 59. b. pyhold Tenants, are either by the Change or Alteration of the Lord, or by the Change of the Tenant; but the Change of the Lord ought to be by the Act of God, or therwise no Fine is due, but by the Change of the Te nant, either by the Att of God, or by the Att of the Party, a Fine is due; some of which Fines are by Custom made certain, and some are incertain, but then they must be reasonable, tho' they are incertain.

Cro. Eliz. 779.

Where the Fine is certain, the Lord may refuse to admit without a Tender of it; but where 'tis incertain, the Lord is first to admit the Tenant, and then set 4 Rep. 27, 28. Fine, and whether 'tis reasonable, or not, it shall be determined by the Court, either upon a Demurrer, or 3 Mod. 133. by a Jury upon Proof of the yearly Value of the Land; and for Non-payment of an unreasonable Fine the Lord cannot enter.

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Sea shall excuse the Forseiture in not paying a Fine, because it shall be intended he had no Notice of the Death of his Ancestor, and the Descent to himself, or of the Proclamations made for him to be admitted, and no Forfeiture shall incur without a \* wilful Refusal to pay the Fine, which \*IRoll.Red was not this Case; for the Fine was tender'd as 75. S. P. foon as the Heir returned. 2 Cro. 226, Under hil

verfus Kelfea. 2. In a special Verdict in Ejectment the Case 1 Salk. 386. was, (viz.) A Surrender was made out of Court to S. C. the Use of R. F. and his Heirs, who died before I Lutw. 769. the next Court, and the Jury found that I. F. an S. C. Infant was the Son and Heir of the Surrendree; See the Pleadand that this Surrender was presented at the next ings in this Court, and Proclamation made for the Heir to Cafe in the Apcome and be admitted; and the like Proclamations made at three Courts afterwards, but he did not

come at either of those Courts to be admitted, and to pay a Fine; thereupon the Steward of the Court commanded the Bailiff to seise it to the Use of the Lord, and this was found to be the Custom of the Manor; the Question was, whether an Infant shall be compelled to be admitted to a Copyhold Estate which he hath by Descent, and to pay a Fine, or whether his Neglect or Refusal shall be excused by his Nonage; and three Judges held that his Infancy shall excuse him, but \* Hole Chief Justice \* Upon his Oheld that it should not, because the Estate conti-pinion a Writ nued in the Surrenderor till the Surrendree or his of Error was Heir was admitted: Therefore 'tis absurd to say brought in the that the Right of the Infant is protected by his Exchequer-Nonage, when he hath no Right before he is ad-Chamber. mitted; he granted that Infancy might sometimes delay a Remedy to recover a Right, but that it was never yet allowed to destroy a Right: Now in this Case the Lord hath a Right to a Fine upon the Admittance of the Heir; but if this Infant should die in his Minority, and before he is admitted, then 'tis plain the Lord looses a Fine; and

for that Reason he either ought to be admitted,

or to forfeit his Estate. 3 Mod. 221. King versus

4 Rep. 28,

No Fine is due to the Lord of a Manor, either upon a Surrender or a Descent, until Admittance of the Tenant; but if after Admittance the Tenant refuses to pay the Fine, being personally demanded of him, 'tis a Forseiture.

fines upon Admittances, Adions for fuch fines, and the Manner of declaring for Forfeitures in Mon-payment. See Leet (E) per totum.

(B)

Fine is a Sum of Money paid to the Lord of Manor upon an Admittance unto any Lands or Tenements held of him; and by the general Custom of all Manors, the Copyhold Tenants are to pay Fines after Admittance, which is the Cause of the Fine, tho' there may be a special Custom to pay Fines upon Licenses granted to them to leafe their Copyholds, and Fines may be due upon the Death of the Lord, but this must be by Custom, and so likewise by the Death or Alienation of the Tenant; but they are generally due upon voluntary Grants, Surrenders or Descents, where a Copyholder in Fee surrenders to the Use of one for Life, Remainder to another for Life, Remainder to another in Fee; there is but one Fine due, becaule the particular Estate for Life and the Remainder are but one Estate; but there may be a Custom to the 1 Roll. Abr. 505.

1. The Lord of a Manor fet a Fine on a Copyholder upon his Admittance, and died before it was paid; afterwards his Widow, who was likewise his Executrix, brought an Assumpsit for this Fine, and upon the general Issue pleaded, had a Verdict; but upon a Motion in Arrest of Judgment it was held, that an Assumpsit would not lie for a Fine upon an Admittance to a Copphold E-

3 Mod. 239. S. C.

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Cartwright.

state, on an Assumpsit in Law; the Reason is, because 'tis a Duty arising out of an Inheritance, and out of a Custom, and likewise out of a Tenure; this was the Opinion of the Chief Justice Holt; but the other three Judges held, that this Action would lie, and that it was like an Assumplit for the Duty of Scavage, which was brought on an Assumplie in Law; and this was the Case of the Lord Mayor of London and Goree, where it was held, that the Action would lie, though the City had the Inheritance in that Duty, but the Reason is stronger in this Case; for the Fine did not depend on the Inheritance, because that was already set by the Lord of the Manor. 3 Lev. 262. Shuttleworth verfus Garnet.

2. Tis now generally held, that an Action of See the Plead-Debt will lie for a Fine upon an Admittance to a Copy- ings in this hold, though this was formerly doubted; but then Case in the the Plaintiff must declare that he is Lord of the Appendix, Manor of H. and that fuch a Meffuage and fuch Fines pl. 24. Lands are Parcel thereof, and usually granted by Copy of Court-Roll; and that T. S. was seised thereof in Fee, \* and furrendered the fame into \* Or as the the Hands of two Customary Tenants, to the Use Case is upon of M. W. (the Defendant) and his Heirs, who at Descent. fuch a Court held on fuch a Day, &c. was admitted by the Steward; and thereupon at the same Court he affessed a Fine of 101. and appointed a Day and Place for the Payment thereof to the Lord of the Manor, and that it was not then paid; then he must set forth a Demand, and a Denial to pay it, ad damnum, &c. 1 Luiw. 597. Bellot versus

3. In \* Willo's Case in B. R. it was adjudged that \* 13 Rep. 1. a Fine of 51. fet on a Copyholder upon his Admit- Postea (D) tance to an Estate of the yearly Value of 11. 10 s. pl. 2. S. C. was very unreasonable, and therefore void; but this Point was fettled by a Decree in Chancery by the Lord Chancellor Finch, (viz.) a Bill was brought by the Copyhold Tenants against the Lord of a Manor to be admitted to their Copyhold Tenements, paying a reasonable Fine; and the Court decreed two Years Value of their Tenements to be a reasonable Fine; and that they shall be admitted respec-

tively,

#### Forfeiture of Coppholds, &c.

tively, paying that Fine. Ch. Rep. 464. Morgan ver. fus Scudamore.

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#### Forfeiture of Copyholds for refusing to appear at the Lozd's Court, and to de Services, & econtra.

For not paying a Fine. (C)(D) For Felony. (E) By making Leases. (F) (G) By not paying Rent. (H) Forfeitures and Extinguishments in general. (I) (K) Who shall take Advantage of it. (L)

#### (A)

See Amerciament. (C) 1, 4. (E) 3. (B) 14. (C) pl. 2, 3. Fines. (A) 11. Maners, (B) 10.

I Roll. Rep. I. 429. S. C. by the Name of Buttevant ver. Pickstaffe. It cannot be done by Attor-

Copyholder was fummoned to appear at the Lord's Court to be held in the Manor, Oc. on fuch a Day, Oc. and to do his Suit and Services there, and he making Default, an Action was brought against him, in which the Plaintiff declared, that the Defendant (the Copyholder) sectam, &c. voluntarie & contemptuose substraxit & illam facere recusavit, and that on such a Day the Bailiff of the Manor gave him Notice to appear, Leon. 104. &c. but it was not alledged, that the Notice was given per Mandatum Domini; yet it was adjudged a Forseiture of his Copyhold, his not Appearing being a Breach of the Cultom; for a Copyholder holds his Lands per servitia & consuetudines, as well as by

4 Rep. 21. b. paying Rent, Oc. 3 Bulft. 268. Hammond verlus Windibank.

I Roll. Rep. 2. The same Point is reported to be adjudged in 256. S. C. by the same Book, (viz.) that where Notice is given to the Name of

Southcot ver. Adams. P. 26 El. S. P. Barnham ver. Adams. 1at. 14, 122. Johnson's Case, S. P. and Grey ver. Ulisses. S. P. the ret-

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Poftea (H)

the Copyholder himself to appear at the Court at a certain Time and Place, and he doth not appear; this is a Forfeiture of his Copyhold. 3 Bulft. 80. Bell-See Sir Christopher Hatton's feild versus Adams. Case. S. P. Cro. Eliz. 505. and Moor 350. Crisp versus Fryer. Noy 58. S. C. Cro. Eliz. 505. S. C. Hob. 183. S. C.

Services are those Duties which Copyhold Tenants are bound to perform to the Lord by Reason of the Tenure of their Estates which they held of him, such as Fealty, Heriot, Relief, &c. therefore if a Copyholder doth appear and refuseth to be fworn of the Homage, or being fworn, refuseth to present

according to his Oath: This is a Forteiture.

3. In Ejectment, the Question was, Whether a 1 Roll. Rep. Copyholder, who did not appear at the Lord's Court 256. S. C. by to do his Suit and \* Services for three Years together, the Name of was fuch a voluntary Neglett, that the Lord of the Southcott Manor might seise the Copyhold Lands as forseited; ver. Adams. and it was adjudged, that this was no Cause Performance of of Forseiture, because it was not an absolute and Services the politive Denial to appear at Court; 'tis only a Lord may ei-Non feasance for three Years; and there being no ther feise or Custom laid to make such an Offence a Forfeiture, distrain. tis only finable as a Misdemeanor. 3 Bullt. 80. Noy 135. Bellfeild versus Adams.

4. A Copyholder did not appear at the Lord's pl. 2. Court after a publick Summons for that Purpole made at the Church: Adjudged that this was no Caule of Forfeiture, because the Plaintiff in the Action did not specially alledge a Custom for the Copyholders to appear on such Summons; and if there had been any such Custom, it would be hard to make a Copyholder forfeit his Estate; because he might not have any Notice of the Summons; for it

must be a \* milful Refusal to appear at Court to \* A wilful make a Forfeiture; therefore the Notice ought to be Refusal to perional, 1 Leon. 104. Branches + Godb. 142. S. P. appear at the Lord Dacres versus Hurlstone, S. P. See Cra. Eliz. Lord's Court makes a For-353. ‡ Tavernor versus Crommell, feitme, because

in every Copyhold Estate there is a Condition in Law implied for the Copyholder to do Service there, upon Pain of Forfeiture. † Winter's Cafe. † Co. Ent. 288. S. C. 4 Rep. 27. S. C. Wafte. (A) 1. S. C.

5. Where 13

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#### Forfeiture of Coppholog, &c.

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5. Where a Copyholder was doubtful whether fuch Services should be performed, and told the Steward that he would not pay or perform them, till it was proved by law: Adjudged this was no For-\* Antea (A) feiture. P. 26 Eliz. in \* Barnham and Higgin's Cafe. Latch 14. Fohnson's Case, and Latch 122.

Grey verfus Uliffes.

6. So where a Copyholder was present in Court, and there being a Question whether the Court was lawfully held, and he being called and asked whether he did appear, he replied, that if it was a lawful Court he did appear; but if it was not a lawful Court, then he did not appear: Adjudged this was no Contempt or Non-appearance to as to make a Forfeiture. Stile 241. Parker versus Cook.

A Copyholder for Life forfeits his Copyhold upon a wilful Refutal to pay his Rent; fo if a Copyholder of Inheritance doth not appear at Court upon a Summons, 'tis a Forfeiture, though he doth not actually refuse to appear; so if they will refuse to be of the Homage, or will not make a Present-

ment. Mod. Cases 468.

#### Forfeiture of Copyholds for not paying a Fine.

(C)

See Fines. (A) per totum.

Cro. El. 779. 1. S. C. Moor 622. S. C. by the Name of Dalton ver. Hammond.

THERE the Lord affesses a reasonable Fine, and gives Notice to the Copyholder himfelf to pay it, he doth not forfeit his Estate, though 'tis not presently paid; for he shall have a reasonable Time to pay it, because he could not tell how much would be affeffed.

2. But this must be understood where the Fine is incertain, for 'tis otherwise where the Fine is certain; for in such Case he must pay it upon Admittance; and if afterwards he refuse or deny to pay it, this is a Forfeiture. 4 Rep. 27. Hubbard versus

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3. The Lord of the Manor affeffed 12 l. for a See Denny Fine, and appointed the Copyholder to pay it on ver. Lemon. a certain Day within three Months at his Manor-House; the Copyholder insisted, that only the Value of two Years Quit-Rent was due for a Fine, which he tendered at the same Time the other Fine was affessed; and did not appear at the Time and Place appointed by the Lord to pay the other Fine affessed: Adjudged this was a Forseiture, but if he had appeared at the Time and Place, and tendered the Value of two Years Rent, as he did when the Fine was first affessed, then it would have been no Forseiture. 2 Cro. 617. Gardner versus Norman.

4. So when the Lord of the Manor of Latham in Raym. 41. Middlesex affessed two Years Purchase for a Fine S. C. upon the Admittance of a Copyholder, and appointed a Time and Place to pay it within half a Year: who replied he would only pay the Value of three Years Quit-Rent according to the Custom, and not any incertain Fine; and for not paying the Fine affeffed, the Lord entered and brought an Ejectment; which being tried at Bar, it was adjudged, that where the Fine was incertain, there ought to be both Time and Place appointed for the Payment, and an actual Demand of the Copyholder to pay it, otherwise he shall not forfeit; but in this Case the Jury found that the Fine was certain, and that it ought to be three Years Quit-Rent, and no more. Sid. 58. Wheeler versus Honour.

5. No Fine is due to the Lord upon a Surrender or Descent before Admittance of the Tenant; and if the Fine is reasonable, and the Tenant resuse to pay it, 'tis a Forseiture; so adjudged in Sand's Case, cited in Hubbard and Hammond's Case.

6. There have been many Questions what shall be a reasonable Fine, and what not; and 'tis generally held, that if the Fine is unreasonable, the Tenant shall not forseit, if he resuses to pay it: Therefore in an Action of Trespass the Point in Issue was, Whether the Copyholders of such a Manor

nor have usually paid Fines at the Will of the Lord upon their Admittances to their Copyhold Estates, or the Value of two Years Quit-Rent, and no more. as Fines certain; at the Trial the Plaintiff produced in Evidence feveral Court-Rolls, by which it ap. peared, that the Lords of the Manor had taken incertain Fines upon Admittances and Surrenders, (viz) sometimes more, and at other Times less; but always under the Value of two Years Quit-Rent; but that upon Admittances on Descents, they had taken incertain Fines above two Years Value of the Quit-Rent; for if under that Value, 'tis no Proof, that the Fines are uncertain, because upon Admirtances on Descents, 'tis a good Custom to pay two Years Value, or under, for a Fine; but in Cases of Surrender or Purchase, the Lord may take what Fine he will, but the Taking such Fines is no Proof, that by the Cultom of the Manor, the Fines are incertain; and that upon Non-payment after a Demand at a Time and Place appointed, makes a Forfeiture. 2 Bulft. 32. Allen verius Abrabam.

3 Lcv. 255.

7. Upon a Demurrer in Replevin the Case was, A Copyholder was admitted to Copyhold Lands and Tenements of the yearly Value of 28 l. and that at fuch a Court, &c. a Fine was affested of 351, upon his Admittance, and a Time and Place appointed for Payment; which not being paid, the Lord entered for a Forseiture; the Copyholder insisted, that the Fine was unreasonable, and that there was a Cufrom in the Manor to pay a Year's Value of the Lands for a Fine upon an Admittance, (viz.) 28 l. which he tendered, and it was refused; it was adjudged, that this Fine was certain, though 'tis true, that the Value confists in Estimation, and sometimes more may be given for Lands, and sometimes less; but in this Case neither the Custom or the Value were incertain, because it may be tried by a Jury, whether the Lands were of that yearly Value, at the Time of the Admittance, or not. 3 Mod. 132.

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#### Fosfeiture of Coppholog, &c. not forfeited foz not paying Kines.

#### (D)

I. IN Trespass, &c. the Case was, Whether the Lord of a Manor might affeis two Years and an Half's Value of the Land according to the Rack-Rent for a Fine, and upon Non-payment enter for a Forfeiture; and adjudged he could not, for 'tis an unreasonable Fine, and that one Year and an Half's Rent, according to the improved Value, was high enough; and that the Copyholder might justify the Refusal to pay two Years and an Half's Value.

Cro. Car. 142. Dom versus Golding.

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2. A Copyholder surrendered a Cottage, and an Acre and an Half of Land; the Surrendree was admitted, and the Steward affessed two Years Value of the Cottage, &c. and upon Refusal to pay it after a Demand, the Lord entered for a Forseiture: Adjudged that two Years Value being 51.6s. 8d. was an unreasonable Fine for a Cottage and an Acre of Land; but if it had been a reasonable Fine, in fuch Case, a Day and Place should have been appointed for the Payment, because the Penalty is so great for Non-payment, it being no less than the Forfeiture of the Estate. 13 Rep. 1. \* Willows ver- \* Antea (B) fus Willows.

3. In Trespass by a Copyholder against the I ord of the Manor, for breaking and entring his House and Close, who pleaded, that he had admitted the Plaintiff into the faid House and Land being Copyhold, and had affessed a Fine of twenty Nobles upon his Admittance, which he appointed him to pay on such a Day, being three Months after, at his Bailiff's House; which not being paid, he justified the Entring, Gc. on the Premisses as forfeited; and upon Demurrer it was adjudged, that the Lord of Manor is not bound to fet forth in the Declaration, that the Fine was reasonable; for if it was not, that ought to be shewn on the other Side; but

pl. 3. S. C.

\* 13 Rep. the Court held, that the Lord ought to lay a \* Do S. P. mand of the Fine personally of his Tenant, and at the Stile 387. Time when it became due, or soon afterwards, for Fanshaw ver. 'tis no Forseiture not to pay it, unless' tis so de-Bond. S. P. manded. Hob. 135. Denny versus Lemmon. See Bellot versus Cartwright.

> 4. The Steward of the Court fet a Fine of 81. upon the Admittance of a Copyholder; and it being personally demanded, and not paid, the Lord of the Manor entered for a Forfeiture: Now this Manor being surveyed by Commissioners for that Purpose appointed in the Reign of Queen Elizabeth, the Court of Chancery decreed by the Confent of the Lord and his Tenants, that the Fines should be alcertained according as the Lands were then valued, which was a Year and Half's Value upon Descenti, and this was to be binding for ever: And upon an Ejectment now brought, the Question was, How the yearly Value should be computed, (viz.) whether at the Value as the Lands were at that Time, or according to the improved Value fince; the Tenant being willing to pay according as the Lands were valued on that Survey; and the better Opinion was, that the Tenant had not forfeited for refusing to pay according to the improved Value, for it would be hard to make a Forfeiture without a wilful Default: Now in this Case the Default was not wilful in Non-payment of a Fine; for the Temant was willing to pay a Fine, but not such a Fine as the Lord demanded, who might have brought an Action of Debt for this Fine, and that would have brought the Right in Question; but let the Right be as it will, if the Tenant hath a probable Cause to refuse the Payment of a Fine demanded, he shall not forfeit for Non-payment 2 Mod. 229. Trotter verius Blake.

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### forfeiture of Coppholos for Felony.

(E)

HE first Resolution in Jay and Harris's Case is, that where a Copyhold escheats o the King, by Reason of an Attainder of his Copyholder for Felony, that in such Case the neward of the Court may grant it over ex officio, vithout any special Warrant for that Purpose: because he is warranted by the Custom of the Mafor to make Grants, and this shall bind the King ind his Heirs, though 'tis the Duty of fuch Stewrd to inform the Lord Treasurer, or the Lord Chancellor, or the Barons of the Exchequer, or any of them, for their Direction in such Case. 4 Rep.

30. Harris versus 7 ay.

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2. Custom of a Manor, &c. for the Widow to have her free Bench, and the Heir not to be admitled, during her Life; and that if a Copyholder committed Felony, and it was presented by the Homage, that in such Case the Lord might seise for a Forfeiture; the Father died feised, his Son and Heir was convicted of Felony, and the Mother was admitted to her free Bench, and soon afterwards died; the Question was, Whether after her Death, the Lord might feise; it was insisted, that he could not; because the Widow was the Copyholder for Life, and her Son who was the Felon, was not within the Custom; because he was not a Copyholder at that Time, when the Felony was committed; and Cultoms ought not to be taken frictly, but ac- \* Because the cording to Equity: But adjudged, that in this Case Custom was the Lord might \* feise. I Leon. I. Bornford versus found for bim Packington.

3. One of the Regicides was a Copyholder, who See Att of Anno 1655, furrendered his Copyhold to the Lord Parliament. of the Manor to the Use of his Children, and (B) 5. S. C. died; the Children were admitted, and afterwards the Manor was fold to the Plaintiff, Anno 12 Car. 2: the Regicides were attainted by Act of Parliament, by

by which a Forfeiture was made of all their Estate and other Things of that Nature: One Judge held, that by these general Words, the Copyhold was

4. Copyholder for Life, Reversion to T. S. for

\* See the Cafe given to the King; but all the rest were of another Opinion, (viz.) that \* Copyholds are never in of the Duke of York ver. Sir cluded in an Act of Parliament, where the Lord John Mar- might have any Prejudice, unless expresly named 2 Vent. 38. Lord Cormallis's Cafe. tham.

T. Jones 189. Life, after the Death, Surrender, Forfeiture, or o. S. C.

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ther Determination of the Estate of the Copyholder in Possession, who was afterwards convicted of Falony; the Lord did not enter for the Forfeiture, but the King pardoned the Copyholder, and the Reverlioner entered, and on a special Verdict in Eiech. ment his Entry was adjudged lawful; but upon a Writ of Error brought it was objected, that the + Lord of the Manor ought first to have entered and determined the Estate of the Copyholder, and then the Reversioner might have entered on him, but the Judgment was affirmed; because a Copyholder the Lord may is only Tenant at Will, and by the Attainder of Felony, his Will was determined, so that he is this Case there disabled to hold any Estate; and if so, then the Reversioner may take Advantage of this Forseiture fentment. pl.6. Lev. 93. Strode verlus Dennison; but the Lord shall hold it during the Life of him who was attainted. 9 Rep. 107. a.

2 Vent. 38. S. C.

5. A Copyholder of Inheritance was convioted of Felony, but before Judgment he had his Clergy; the Question was, Whether the Lord might enter for a Forseiture without a # special Custom for that Purpole; and the better Opinion was, that he could not 1 Lev. 263. Forey versus Pauly, and 1 Lev. 34.

ford's Cafe, the Custom was found.

# In Borne-

See 1 Bultt. 13. and Gittins ver. Cowper. 2 Brownl. 217. Godb. 287.

6. But a Custom to seise upon the Presentment d the Homage, that a Copyholder had committed Felo ny, is void, because he may be acquitted upon hu Trial. I Lev. 34.

Cro. Eliz. 499.

The Lord may take Advantage of a Forfeiture without the Presentment of the Homage, becault the Presentment is not of Necessity, but for the Lord's better Information of his Title.

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# forfeiture of Copyholds by making Leales not warranted by the Custom.

#### (F)

the Where it Bulft. 209.

Where the Copyholder made a Lease for one S. C.

Year, excepting the last Day of that Year, \* Cro. Car.

Ind so from Year to Year, still \* excepting the last

Day of each Year, as long as he should live: Adthews were

udged this was a Forseiture, because its a Lease for Whetton.

two Years, excepting two Days, and its no more S. P. W.

than a Shift to avoid a Forseiture. 2 Cro. 308. Lut- Jones 249.

terel versus Westower.

S. C.

2. A Copyholder made a Lease of his Freehold 1 Bulft. 190. Lands for ten Years, and of his Copyhold for one S. C. Year; but covenanted with the Lessee, that he Postea Forshould enjoy the Copyhold Lands from Year to Year, feiture. (L) 2. during the ten Years: Adjudged this was a Forsei-S. C.

ture, for 'tis a Leafe for ten Years. 2 Cro. 302.

Mountague's Case.

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3. Copyholder for Life had a License from the Lord Cro. El. 4020 to make a Lease of his Copyhold for three Years, if S. C. be so long lived, and he made a Lease for three Years Owen 71. absolutely: Adjudged this was not a Forseiture, be-S. C. cause such a Limitation, (viz.) (If he should so long If such Lilive) is made to his Lease, by Operation of Law; for cense had been if he doth not live three Years, his † Lease is detergioen to a Commined. Poph. 105. Hall versus Arrowsmith.

pybolder of Insperitance, and

be bad made such Lease, it had been good against the Heir, and the Lessee would have an Interest by Virtue of the Lease. Owen 71.

† 2 Cro. 436. Worledge versus Banbury, S. P.

4. But it hath been held, that the Lesses might Hutt. 102.

assign such Lease, or make an Under-lease without S. C.

a new License; and that if the Copyholder die, the sease shall be good against the Lord, during the Term of three Years. Poph. 188. Foliason versus Smart.

5. A Copyholder made a Lease for three Years, Wilcock's and so from three Years to three Years: Adjudged Case, contrast a For- See 2 Mod.

80. S. P.

#### Forfeiture of Copyholds by making, &c.

a Forseiture, because 'tis a Lease for six Years, 1

Bulft. 190.

6. A Copyholder had License to make a Lease so twenty-one Years, to commence at Michaelman Day next after the License given; and he made! Lease pursuant to his License, but before Michaelman, he made another Lease of his Copyhold to T.S. which was likewise for twenty-one Years, and to commence on Michaelman-Day sollowing: Adjudged this second Lease was void, for it was made without any License, because the License given by the Lord, was satisfied by making the first Lease; and therefore the Making this second Lease was

Forfeiture of the Copyhold. Moor 184.

7. A Copyholder for Life owing 100 l. and on Peter Seely, being bound with him for the faid Debt, he (the Copyholder) executed a Deed to the faid Peter, by which he covenanted, granted and agreed with Peter, that he should have and enjoy the Co pyhold Lands for seven Years, and so from seva Years to Seven Years, for the Space of forty-nine Years, if he (the Copyholder) [hould so long live; but to be void upon the Payment of the faid 100 h and la terest; in a special Verdict in Ejectment, it was infisted, that the Lord was not intitled to a Forstiture by the making this Deed; it was admitted, that the Word Covenant, and the Words to Han and Einjoy will make a Leafe, because these Words give an Interest; but then it must be in Cases of Freehold; but if Construing it to be a Lease in the Case of a Copyhold will work a Wrong, as it cotainly will, for 'tis a Forfeiture of the Estate of the Copyhol'der, and his Creditor would loofe his Security, then it shall never be a Lease, but a Covenant; but ad judged, that the Parties plainly intended it to be a Lease; 'tis true, if those Words had been cloubtful, this had been a Covenant only but 'tis certainly a Lease of the Copyhold, and by Conseque nce a Forfeiture. 2 Mod. 79. Richards ver 1us Seel v.

8. Le ase of a Copyhold, and the Lessor endeavouring to prove a Custom to warrant such a Lease, gart in Evid ence, that there were such Leases made do no 27 H. 8. and at several Times since, some sa

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twenty Years and upwards: Adjudged, that this was not a fufficient Proof of a Custom to make Leases; for this was within Time of Memory, and a Custom must be Time out of Memory. Cro. Eliz. 351. Jackman versus Hoddesden.

9. A Feme fole Copyholder married, and afterwards her Husband made a Lease for Years, not warranted by the Custom; the Question was, Whether this was a Forfeiture, the Point was not determined: but the better Opinion seemed to be, that it was no Forseiture to bind the Wise, because such a Lease an be no Prejudice to the Lord. Cro. Eliz. 145.

Hide versus Challonor.

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10. The Case last mentioned is reported in seve- Godb. 345. ral Books by the Name of Severn versus Smith; and Palm. 385. ustice Doderidge in arguing the special Verdict in S. C. ejectment, took this Difference, (viz.) that where 2 Roll. Rep. Feme fole Copyholder marries, and her Husband 344, 361, makes a Lease not warranted by the Custom, 'tis a 372. S. C. Forfeiture of the Copyhold; because it was her Folly Postea Forfeito marry a Man who would forfeit her Estate; but ture (L) 3. where a Copyhold is granted to a Feme Covert, and her S. C. Husband makes such a Lease, that is no Forseiture. Husband and Cro. Car. 7. Severn versus Smith.

11. Copyholder of Inheritance furrendered to the Lord, who made a Lease of his Manor, and W. Jones Mo of this Copyhold: Adjudged this did not de- 449. S. C. entine the Copyhold, because being leased with by the Name he Manor, 'tis included therein as Parcel of the of Downcliffe Manor; but if it had been leased by it self, in ver. Minors. uch Case, the Copyhold would have been extinsuished, because during the Lease, it was severed rom the Manor, and could never again be demifed by Copy of Court-Roll. Cro. Car. 521. Lee versus Boothbie.

12. A Copyrolder made a Lease parol for three Cro. Eliz. feirs, to commence at Michaelmas next; the Lef- 498, 499. ee died before Michaelmas; and this was adjudged Forfeiture, tho' the Leafe was by Parol, and to begin at a Day to come, and the Leffee had not enered.

Wife. (A) 2.

Fozfeiture

### Forfeiture: Coppholos not forfeited bi making Leales.

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#### See Forfeiture. (L) 4.

Copyholder made a Lease for three Lives, and Livery and Scifin was made, but not endorfed on the Indenture of Leafe: Adjudged this was no Forfeiture of which the Lord might take Advantage, and so it was adjudged in one London's Case, where a Copyholder sold his Copyhold Lands by \* Tet this is Bargain and Sale \* without Enrollment. Godb. 269.

a Forfeiture. Roll. Abr. Tit. Cop. (D) 11.

> 2. Where a Copyholder made a Feoffment with a Letter of Attorney to make Livery, yet though Livery is not made, 'tis a Forfeiture; but if there had been no fuch Letter of Attorney, then 'tis no Forfeiture, because tis still in the Breast of the Copyholder, whether he will perfect it or not. Roll. Abr. Tit. Copyhold. (D) 12.

Manors. (A) 7. S. C.

3. The Earl of Arundel being feifed in Fee of the Manor of B. made a Feoffment thereof to the Use of himself for Life, Remainder to the Use of the Lord Lumley and Elizabeth his Wife, (who was the Daughter of the faid Earl) and to the Heirs of their two Bodies, &c. the Lord Lumley made a Leale of the Copyhold to the Plaintiff for 100 Years; it was argued, that by this Lease, the Customs were gone, and by Confequence the customary Tenure; for the Leffee cannot hold secundum consuetudinem manerii, because the Services are extinguished: But adjudged, that the Copyhold still remains, and that if any Disadvantage arises to the Lord, 'tis by his own Act, against which he shall not be relieved 2 Leon. 208. Beal verfus Langley.

William Savill was Tenant in Tail of Copyhold Lands held of the Manor of Wakefield, and mades Leale by

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Leafe thereof for twenty-one Years without Licenfe. on purpose to commit a Forfeiture, which he appointed to be for the Benefit of Arthur Savill and his Heirs; this Lease was presented at next Court. and the Lord feised the Lands; Arthur Savill was not admitted in the Life-time of William Savill; but the Lord having seised the Copyhold, admitted the Lessor of the Plaintiff, and then fold the Manor to one Clapham, and then he admitted the faid Arthur Savill; and adjudged he had a good Title, though the other was admitted before him, because this Forseiture, it being by Custom, shall operate in Nature of a Surrender or Common Recovery, and the Lord is bound to admit him who is appointed by the Person that committed the Forseiture. 2 Saund. 422. Grantham versus Copley.

forfeiture of Copyholds for not paying Rent, & econtra.

(H)

The Lord of a Manor demanded Rent due and owing to him by his Copyhold Tenant, who answered, that he had it not about him, but that he would pay the Money to him (the Lord) as soon as he could; whereupon the Lord appointed him to pay it on such a Day, and at such a Place within the Manor, which was not done: Adjudged this Non-payment of Rent made a Forseiture, because a Time and Place were appointed for the Payment, and after a Demand made in due Form; but the Reply of the Tenant, that he had not the Rent about him, or if the Lord had appointed it to be paid at a Place out of the Manor, and the Tenant had failed, that would not have made a Forseiture; so adjudged in Williams's Case cited in Latch. 122. Grey and Ulisses's Case.

Moor 350. S. C. Noy 58. S. C. cited. Stile 281. S. C. cited, Antea (A) pl. 3.

\* Co. Entr.

† It must be

demanded of

4 Rep. 27.

Hob. 135.

8 Rep. 92.

his Person, or

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ture.

Forfeiture of Coppholos for not, &c.

2. Copyholder of Inheritance rendring Rent at Michaelmas and Lady-Day, half yearly, by equal Portions: the Rent was in Arrear for three whole Years; then the Lord of the Manor at the last Instant of the Day of Payment, demanded the Rent on the Land, but there was no Person there to pay it; the Question was, Whether this was a For-feiture of the Copyhold; it was infisted, that it was not, because it was only the Negligence of the Copyholder who shall not incur so great a Penalty without an actual Demand and wilful Denial in Person to pay the Rent; but the better Opinion was, that a voluntary Negligence for three Years to pay his Rent, amounted to a wilful Denial. Cro. Eliz. 505. \* Crisp versus Fryer.

3. The Lord of a Manor + demanded Rent ar-

rear of his Tenant being a Copyholder, who replied he had no Money: Adjudged this was not 'tis no Forfei- a Forfeiture of his Copyhold, because the Denial to pay, Gc. must be wilful and obstinate to work a Forfeiture of the Estate. Godb. 142. Winter's Case, which seems to be the same with Williams's Case. See antea in Sir John Branch's Case. S. P.

4. The Lord of a Manor fold his Estate by Bargain and Sale enrolled, the Vendee demanded Rent of a Copyholder who refused to pay it: Adjudged this was no Forfeiture, unless he had Notice given to him of the Purchase and Alteration of the E-Itate; to adjudged in Beconshaw and Southcote's Cale,

cited in Frances's Cafe. 8 Rep. 92.

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forfeitures in general, and other Determinations and Extinguishments of Copyholds.

(1)

There is a real and personal Forseiture of Copyhold Estates; a real Forseiture, as committing Waste, and this need not be found by the Homage; but a personal Forseiture, as refusing to pay Rent, must be sound by the Homage. 4 Leon.

Cafe 382.

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1. It was resolved, that where a Lord of a Ma- See Accepnor made a Lease for Years, for Life, or any other tance (A) Estate by Deed of a Copyhold, which was forfeited per totum. to him, or which escheated; in such Case this Land could never be granted again by Copy, because the Custom was destroyed; for, during the Continuance of those Estates, the Lands could not be demised, nor were they demisable by Copy of Court-Roll; the Law is the same where the Lord makes a Feoffment, and enters for the Condition broken; but if he keeps it in his own Possession for several Years, or leafes it at Will, there either he or his Heirs, or Assigns may regrant it by Copy; and so they may if the Interruption was tortious, as by Diffeisin or Descent, &c. by false Verdict, or by an erroneous Judgment, for quod contra legem fit pro injetto habetur; but if the Lord of the Manor acknowledge a Recognizance or a Statute, and his Lands are extended; or if his Wife is endowed; though these are Interruptions of the Custom by Acts of Law; yet because they are legal Impediments, the Lands cannot afterwards be granted by Copy. 4 Rep. 31. Frenche's Cafe.

2. A Copyholder forseits his Estate, if he dig for Mine Coals or Gravel, or in any Quarry not open at the Time he was admitted to his Copyhold; 'tis a Forseiture likewise if he grub up Hedgerows, or remove Land-Marks, or lop or top Timber-Trees, and generally any Sort of permissive or voluntary Waste is K 2 a For-

## 132 Fogfeitures in general, Determinations

a Forseiture, and such Waste done in one Part of the Copyhold is a Forseiture of the Whole; but if he hath two distinct Copyholds held of the same Manor, in such Case, Waste done in one Copyhold is not a

Forfeiture of the other.

3. If Waste is done by an Infant Copyholder, this is a Forseiture, because not to do Waste is a Condition in Law annexed to his Estate in the Land; and the Statute of Limitations will not bar the Lord from taking Advantage of such Forseitures, because that Statute, or a Fine and Nonclaim will not bar, but where there is a Transmutation of Possession; all which was allowed by the Court for Law in Michaelmas-Term, B. R. 1721, at a Trial at Bar between the Duke of Somerset and Sir Henry Peachy.

1 And. 191. S. C. Gouldf. 34. S. C. Antea Acceptance. (A) 1. S. C.

4. The Queen being seised of a Manor in Right of the Crown, granted by her Steward some Lands held of the Manor by Copy of Court-Roll according to Custom, &c. in Fee; and afterwards she made a Lease of the same Lands for twenty-one Years, the Lessee assigned the said Terms to the Copyholder, who accepted the same; then she granted the Reversion to T.S. in Fee, the Term for twenty-one Years expired; and then the Grantee of the Reversion entered on the Copyholder, and adjudged lawful, because his Estate was determined by his Acceptance of this Lease for Years, which was his own proper Act. 2 Rep. 16. Lane's Case, 1 Leon. 170. S. C. reported by the Name of Smith versus Lane.

Antea AH of Parliament.
(A) 2. S. C.

5. Where an Admittance is made, but not pursuant to the Surrenderor, and so by Consequence is void; yet if the Surrenderor releases all his Right to the Person thus admitted, that shall extinguish all his customary Right, because the Surrendree by this Admittance was the Copyhold Tenant in Possession, and therefore the Release of such Right will enure to him by Way of Extinguishment. 4 Rep. 25. Kine versus Quintin.

Winch 66.

6. Lease of a Manor, &c. afterwards a Copyholder by Bargain and Sale conveyed his Copyhold Hutt. 65.

5. C. Antea Customs of Manors. (A) 4. S. C. Postea Forseiture. (L)

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to the Lessee of the Manor: Adjudged by this Conveyance the Copyhold was extinguished, because in Respect to the Lord a Copyholder may do any Act to determine his Estate, by shewing he will not hold it any longer by Copy of Court-Roll. W. Jones 41. Hasset versus Humberstone.

7. The Lord of a Manor made a Lease for Years thereof to a Copyholder: Adjudged, that as to the Lessee, his Copyhold had no longer any Continuance, but that he might regrant the Copy to whom he would, because the Land was always demised or demisable by Copy; so adjudged in 4 Rep. 31, in

French's Cafe.

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8. A Copyholder for Life told the Lord of the Manor, that he would not hold his Estate any longer by Copy of Court-Roll, but by a Bill signed by the Lord himself, for the Life of the said Copyholder, to which the Lord consented, and accordingly signed such a Bill, and gave it to the Copyholder, which he accepted: Adjudged, that by the Acceptance of such a Bill, the Copyhold Estate for Life was determined. 1 And. 199. Coleman versus Bedell.

9. Where the Husband purchased a Copyhold for himself during his Life, and for the Lives of his Wise and T. S. his Child; and afterwards he who had the Inheritance of this Copyhold, granted the Lands to W. R. for Life, rendering Rent, and made Livery and Seisin, and then levied a Fine of the same Lands to the Husband who was the first Copyholder, and afterwards accepted the Rent of the said W. R. who was the second Grantee of this Copyhold: Adjudged that the said Copyhold was determined. Drer 20. Compton's Case.

termined. Dyer 30. Compton's Cafe. 10. The Lord of a Manor grante

three Sisters, to have and to hold the same successively for their Lives; and afterwards he made a Lease of the same Lands to the eldest Sister for so many Years, Remainder to the second Sister, who agreed to it: The Question was, That admitting the Copyhold Estate to the eldest Sister was determined by the Acceptance of this Lease, then whether the Interest of the second Sister was likewise determined by her Agreeing to such Lease, so that she

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could not enter upon her eldest Sister: Adjudged that the Copyhold Estate of the eldest Sister was not so determined, that another Person might take Advantage of it, for the Lord could not enter against his own Lease; and the second Sifter could not, (if she had not agreed to the Lease) because her eldest Sister was living, and her Remainder was not to have any Effect, whill her eldelt Silter

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was alive. 2 Leon. 72. Curtis versus Cottell.

11. A fingle Woman who was feifed of a Manor, married one of her Tenants, who held Copyhold Lands of the faid Manor; and afterwards she and her Husband suffered a Common Recovery of the faid Manor, and declared the Uses thereof to themselves, and to the Survivor for Life, Remainder to the Heirs of the Wife: Adjudged that the Copyhold Estate of the Husband was extinguished by this Recovery, and fo it is where a Copyholder joins with the Lord of the Manor in making a Feoffment of the Manor, or where he accepts a Leafe of his Copyhold from the Lord. Godb. 101.

Hutt. 65. S. P.

12. Copyholder of the Manor of H. for Life, Oc. the Lord fold the Inheritance of the faid Copyhold to T. S. and afterwards the Copyholder released his Right to the faid T. S. Adjudged that by this Release the Copyhold was extinguished. 1 Leon. 102. Wakeford's Cafe.

1 Vern. 302. Dancer ver. Evett.

A Copyholder of Inheritance agreed with the Lord to infranchise his Copyhold, and took a Conveyance from him in the Name of T. S. and then devised the Lands to his youngest Son, from whom they were purchased by the Defendant; and the Plaintiff who was Heir at Law to the Copyholder, having recovered in Ejectment, as he might do upon the \* Admittance of his Ancestor; the Purchafer exhibited a Bill against him, and insisted that the Estate purchased of the Lord was purely an Estate in Equity, and that the Disposition of the Fee to the Purchaser by the said Conveyance was a Dispolition of the whole Estate the Copyholder had, either in Law or Equity; and it was decreed that the Purchaser should hold against the Heir of the Copyholder, who brought a Bill of Review to re-

\* For the faid Admittance appeared on the Court-Rolls.

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verse the Decree; and insisted that his Ancestor did not alien the Copyhold, to which Bill the Decree was pleaded; and infifted by Way of Demurrer, that there was no Error in it, and the Demurrer was allowed.

13. When a Copyholder builds a new House upon his Copyhold Lands without a License so to do, 'tis no \* Forfeiture, but if he † pull it down again, \* 4 Leon. tis a Forfeiture. 1 Roll. Abr. Copyhold, B. 6. Cecill 24. S. P. verfus Cave.

Hutt. 103. S. P.

Lit. Rep. 266. S. P.

† 2 Bulft. 50.

14. A Feme fole Copyholder for Life married \* Difference T. S. who committed \* Waste and died: Adjudged where she is that the Copyhold was forfeited, if the Lord enter- but Tenant ed in the Life-time of the Husband; but 'tis other- for Life, and wise if a † Stranger commits Waste without the Tenant in Fee. Affent or Permission of the Husband; this was the Palm. 384. fecond Resolution in + Clifton and Molineux's Case. 2 Roll. Rep. 4 Rep. 27.

† Moor 49. S. P. # Husband and Wife. (A) 8. S. C.

15. But \* permissive Waste is a Forseiture without \* Owen 18. any special Custom to make it so, and yet † two † Noy 55. Judges held that negligent Waste was not a Forfei-

ture, without a Custom that it should be so. 16. Tenant in Tail Male of a Copyhold, Re- 1 Vern. 393, mainder to himself in Fee, purchased the Freehold 458. Parker

of the Copyhold of the Lord; and afterwards for a ver. Turner. valuable Confideration bargained and fold the whole Estate to T. S. which was quietly enjoyed under that Purchase for thirty Years; and the Tenant of this Purchasor being a Woman, married the Son and Heir of the Copyholder, who died long fince, and he being now in Postession by his Marriage, as aforefaid, fet up a Title as the Islue in lail; and the Plaintiff who claim'd under the Purchasor brought an Ejectment, in which a special Verdict was found; but before it was argued he brought a Bill in Equity to be relieved against the lifue in Tail, who pleaded his Title at Law; but decreed that the Tenant in Tail of this Copyhold having taken a Conveyance of the Freehold in his own Name, the Copyhold Estate was merged.

Fozfeiture, K 4

Forfeiture, &c. where, and by what ads a Copyhold Mall not be forfeited or et. tinauilbed.

#### (K)

Lit. Rep. 267. S. C. Winch 8. S. C.

Copyholder was seised in Fee of fisteen Acres in fuch a Field held of the Manor of Het. 5. S. C. H. and there was a Custom in that Manor, that the Lord should have a Fold-course in that Field, Oc. and that no Copyholder should enclose his Lands there, without License from the Lord; but if he enclosed without such License, then to pay a reasonable Fine, to be affessed by the Lord or his Steward, if the Lord would accept it; and if now then the Copyholder fo enclosing should be punished at every Court, till he laid open the Enclosure: A Copyholder enclosed these fifteen Acres with Quick-set Hedge, but left some Spaces about nine Foot broad, and being required to open the Enclofure he refused, and thereupon the Lord entered for a Forfeiture: Adjudged no Forfeiture, because the Enclosure is no Prejudice to the Copyhold it felf, but only to the Lord's Fold-course; and that which makes a Forfeiture must be done to the very Copyhold Tenements; besides the Whole is not enclofed, but only Part: But as to this last Point, Littleton, who reports this Case, tells us, that this was an Enclosure contrary to the Custom. Hutt. 102. Paston versus Utber.

2 Brownl. 197. Antea Cu-Roms of Manors good. (A) 15. S. C.

2. Where the Custom of a Manor was, that a Copyholder for Life might name his Successor, it was held this was fuch a Privilege, that if the Copyholder in Possession cut down Trees growing on his Copyhold, it was no Forfeiture, because he had a greater Estate than barely for Life. 1 Brownl. 132. Rolls or Rawls versus Mason.

3. One Holland purchased a Copyhold of Inheritance in Irult for an Alien, and upon an Inquilition found, the Lands were seised as forfeited to the King; and the Question in B. R. was, Whether

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hese Copyhold Lands thus purchased for an Alien were forfeited: And adjudged that they were not, ecause if they should be forfeited, then the Lord of the Manor would lose his Fines and Services; it night likewise be prejudicial to any Stranger claimng this Copyhold, because if it was not in the King's Hands he might fue for it in the Lord's Court, but the King cannot be fued there. Hardres 36. King versus Holland.

4. A Copyholder was outlaned: Adjudged 'tis no Forfeiture of his Estate. 1 Leon. 99. Litt. Rep. 234.

Hetl. 127.

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5. Where a Copyholder for Life suffered a Recopery in the Lord's Court as Tenant in Fee, this was djudged to be no Forfeiture of his Copyhold, berause the Freehold cannot be concerned in a Court-Baron; besides in most Cases the Lord of the Manor s to have the Benefit of Forfeitures; but 'tis unrea-Sonable that he should have any Advantage in this Case, because he is a Party to the Recovery. I Mod.

99. Bird verfus Kirk.

6. Tenant for Life of a Copyhold Suffered a Reco- Fines. (A) pl. very in the Lord's Court, and the Son of the faid Co- 9. S. C. pyholder supposing this to be a Forseiture, entered and surrendered the Estate to the Plaintist; and in a pecial Verdict in Ejectment, it was adjudged that the Surrender was void, because the Suffering this Recovery made no Forfeiture without a special Custom o to do; besides the Son was a Diffeilor by his Entry; for if it had been a Forfeiture, the Lord is to have the Benefit of it, and not the Son, so that he being a Diffeifor, his Surrender must certainly be 2 Mod. 32. Keen versus Kirby.

7. Surrender to the Use of T. S. for Life, Re- Noy 42. S.C. mainder to E. G. in Fee, T. S. was not admitted, but Cro. Eliz. suffered three Proclamations to be made; adjudged 789. S. C. that this should not make a Forseiture of the Estate of E. G. \* in Remainder, because the Estates of \* See Fines. the Tenant for Life, and of him in Remainder, are fe- (A) pl. 12. parate and divided Estates, and the Custom to make S. P. a Forseiture extends only to the entire Estate of one Person in Possession; but if the Surrender had been

to T.S. and E.G. and their Heirs, then they had been Jointenants: And in such Case, if one had been

been admitted, and the other had committed a Forfeiture, 'tis a Question, Whether the Person admitted shall have the Whole, or that the Moiety of him who committed the Forfeiture shall go to the Lord of the Manor; but the better Opinion was that the Lord shall have it till the Remainder come into Possession. Telv. 1. Baspole versus Long.

Forfeiture; who hall take Advantage of it, and who not; and what thall dif pense with a Forfeiture.

(L)

A Fter a Copyholder had committed Waste, the A Lord of the Manor accepted the Rent; yet notwithstanding such Acceptance he may enter for the Forfeiture; for immediately as foon as the Eltate was forfeited, it vested in him. Godb. 47.

1 Bulft. 190. S. C. Antea Forfeiture. (F) 2. S. C.

2. Lease for a Year of a Copyhold according to the Custom, and in the same Lease the Lessor covenanted that the Lessee should hold it longer at his (the Leffor's) Will; it was made a Question in Montague's Case, Whether this was a Forseiture; but admitting that it was, and the Lord should die without taking any Advantage of it, either by Entry or Seifure, it was clearly held, that he in Reversion shall never have any Benefit by it. 301. in Mountague's Cafe.

3. A Feme fole, who was a Copyholder of Inheritance, married, and afterwards her Husband made 2 Roll. Rep. a Leafe for Years not warranted by the Custom of the Manor, by Reason whereof the Copyhold was forfeited; then the Husband died: Adjudged, that after his Death the Lord of the Manor shall not have any Benefit of this Forfeiture, but that the Widow shall enjoy the Estate in the same Manner, as if the had never been married, Cro. Car. 7. Sa-

Husband and vern versus Smith.

Palm. 385. S. C. 344, 361, 372. S. C. Godb. 345. S. C. Antea Forfeisure. (F) pl. 10. S. C. Wife. (A) 2. S. C.

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ot; and what thall dispense with a Forfeiture. 139

4. A Copyholder made a Lease of his Copyhold state for more than one Year nithout a License, and y the Custom of the Manor this was a Forseiture; terwards the Lord made a Lease of this Manor to S. for seven Years, and this Lessee entered for at Forseiture: Adjudged that it was not lawful; or though an Heir may enter in the Time of his neestor, where a Condition is broken, because he privy in Blood, yet a Lessee cannot, because he a Stranger; but if this Forseiture had been prented by the Homage, and entered on the Courtolls, in such Case the Lessee might enter, because y the Forseiture the Copyhold Estate was determined. 4 Leon. 223.

5. There was a Forseiture of a Copyhold by maing a Lease not warranted by the Custom; the Lord I the Manor did not enter for this Forseiture, but ade a Lease of the very Lands so forseited to T. S. I Life: Adjudged that T. S. shall not take the Adantage of this Forseiture, but that the Lessee of the Copyholder, though his Lease was made withut License, shall continue in his Estate, because the Lease made by the Lord before Entry or Prentment of the Forseiture, is in Nature of an Assumance of the Lease made by the Copyholder.

wen 63. Penn versus Percival.

6. A Copyholder fowed his Lands which he held y Copy of Court-Roll, and afterwards committed Forfeiture: Adjudged, that the Lord of the Maor might enter and take the Crop. 4 Rep. 21. In From's Case.

7. The Lord made a Lease for Years of his Ma-Hutt. 59. for to T. S. and afterwards T. R. a Copyholder bar-S. C. ained and fold his Copyhold Estate to the Lessee: adjudged, that by this Conveyance his Copyhold estate was extinguished. Winch 66. Hasser versus

lumber stone.

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8. Copyholder for Life, the Lord made a Lease or Years of this very Copyhold to T. S. then the Copyholder for Life committed a Forfeiture: Adulged that the Lessee for Years, though he had only Interesse Termini, might enter for the Forseiture, because by such Forseiture the particular Estate for life was determined. Godb. 177. Meers versus Ridont.

9. Upon

## 140 Fozfeiture; who shall take Advantage, who

9. Upon Evidence to a Jury at a Trial at Bar in Ejectment it was ruled, that where a Copyholder commits a Forfeiture, the Lord of a Manor may grant the Copyhold Estate to another before Seisure; because as to the Reversion the Batter is immediately in him. I Lev. 26. Miljar versus Baker.

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no. In the Case last mentioned it was like wise held, that where there is a Lord pro tempore, who hath a lawful Title, tho' but at Will; and if after a Forseiture such a Lord admits that Copyholder, who hath committed the Forseiture; he hath dispensed therewith, not only as to himself, but likewise as to him who is Lord of the Manor in Reversion.

11. Adjudged, that a succeeding Lord of a Mam shall not have any Benefit of a Forseiture for Wash committed by a Copyholder in the Time of his Accestor. 2 Sid. 8. in the Case of Chamberlain versus Drake.

12. Copyholder for Life, Remainder in Fee to T. S. &c. the Copyholder for Life bargained and fold his Copyhold Estate to E. G. in Fee; and then it was agreed between the Lord and the Copyholder for Life, that he should commit Waste, and that the Lord should enter for a Forseiture, and grant the Lands to E. G. upon Condition that he should repair the Waste, and give a Sum of Money to the Copyholder for Life: Adjudged that this Fraud to which the Lord consented shall not prejudice the Estate of T. S. in Remainder, but that he may enter, and the Lord shall have no Benefit of this Forseiture. Cro. Eliz. 598. Rastall versus Turner.

1 Salk. 186. S. C. See Sid. 8, 9. S. P. See the Pleadings in this Cafe in the Appendix, Waste. pl. 13.

13. William Weeks a Copyholder suffered the Buildings to be ruinous and out of Repair, and made a Lease of his Copyhold not warranted by the Custom and died; his Widow claimed her Free Bench; but the Manor being between two Sister as Coparceners, and one of them being dead, the surviving Sister entered for a Forseiture; but it was adjudged against her; for the Law is clear state could not have an Action of Waste, for any Waste done in the Life-time of her Sister; and for the

not; and what thall dispense with a Fozseiture. 141

ame Reason that she could not have such an Acion, she cannot enter for a Forseiture; for in this
Case, it is not a Forseiture nolens volens, but only at
the Election of the Lord of the Manor, and Coparceers are as one Lord: Tis true, one Coparcener is
Heir to the other as to her Moiety; and the Reason
s, because she is in every Respect a compleat Heir,
out yet she shall not enter for a Forseiture done in
the Lise-time of the other, because when it was
sone she was not a compleat Heir. I Lutw. 802.
Eastcourt versus Weeke.

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14. A Copyholder made a Lease for Years by Li- SeePalm.384. ense from the Lord, and afterwards committed a 2 Roll. Rep. Forseiture; this shall only affect his Estate, for 372. he Lease shall stand good. Hob. 177. White ver-

us Hunt.

15. Copyholder for Life, Remainder for Life, the Fines. (A) 12. Copyholder for Life committed a Forfeiture, he in S. P. Remainder shall not enter, but the Lord, because he Remainder was not to take in Possession by Virue of the Custom, during the Life of the Copyholder or Life. 1 Roll. Abr. G. 1.

16. Lessee for Years of a Manor is Dominus pro empore, and therefore if a Copyholder commits any forseiture, such Lessee shall take Advantage of it. Brownl. 122.

17. Adjudged that the Lord of a Manor may grant a Copyhold forfeited to him before Seisure hereof. 1 Lev. 26.

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# Free Bench, og Widow's Effate.

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#### See Admittance (A) 11.

Ree Bench (i. e.) sedes libera, is defined in the old Books, to be that Estate in Copyhold Lands which the Wife hath after the Death of he Husband, according to the Custom of the Manor And this she is to have in Nature of Dower, but it very much differs from Dower at Common Las for in that Case the Widow is only to have the third Part of the Lands of which her Husband died seised: 'Tis true, where the Widow is entitled to her Free Bench, the Husband must likewik die seised, but then she is to have not the third Par but the whole Copyhold; and that a Title which Widow hath to her Dower, cannot be destroyd by the Husband alone without the Concurrence of his Wife; but the Right to a Widow's Estate, or Free Bench, may be destroy'd by the Act of the Husband alone, as may be feen in feveral Cafes fol-

W. Jones 451. S. C.

2. A Copyholder of Inheritance became a Bankrup, there being a Cultom within the Manor of which this Copyhold was held, that if a Copyholder did seised, Oc. his Widow should enjoy his Copyholl Lands during her Life, the Commissioners of Bankrupu fold his Copyhold by Bargain and Sale, to rails Money to pay the Creditors of the Bankrupt Copholder: Afterwards the Husband died, and at a Court-Baron held for the faid Manor, the Homage prefented his Death, and the Widow was admitted before the Bargainee; the Question was, Who had the better Title, the Widow or the Bargainee: And adjudged, that after the Bargain and Sale enrolled her Husband was no longer a Copyholder; and the the Bargainee was admitted after her, yet his Almittance shall have Relation to the Date of the Bargan and Sale enrolled, and so develt the Estate of the Widow,

Widow, who claims her Free Bench by the Cufom of the Manor; but the cannot have any Right by fuch Custom, because her Husband did not die seised of the Copyhold. Cro. Car. 568. Parer versus Bleek.

3. The Custom of a Manor was, that the Widows Palm. 11. of the Copyholders for Life should enjoy, during S. C. heir Lives, the Customary Lands of which their 2 Roll. Rep. Husbands died feised; this being the Custom, the 178. S. C. 2 Cro. 573. Cafe was as followeth. S. C.

Hob. 185, 244. S. C.

Hob. 181.

I. The Lord of the Manor, &c. granted a Co- See Noy 29. whold Tenement to T.S. for Life, and afterwards Remington's old the faid Manor to E. G. and his Heirs, who Cafe. S. P. the Life-time of the Said T. S. conveyed the Inhe- See Hutt. 18. itance of his Copyhold Tenement to P. H. and S. P. is Heirs, Remainder to the Wife of T. S. Remain- 1 Roll. Abr. er to T. S. in Fee, who granted his Remainder in 502. ee to his Son, who died leaving Issue; then the Palm. 111. Wise died, and T. S. married a second Wife, and af- 2 Cro. 573. erwards died seised, &c. and this second Wife enter-d and claimed her Free Bench; and adjudged that er Entry was lawful, because the Customary Elate of her Husband remained as it was at first when granted to him for his Life, and not extinguilhed or altered by the Grant of the Inheritance ohim; because during his Life it was in E. G. nd his Heirs, and not in him, and by Confequence all Customary Incidents belonging to fuch Cultomary Estate still continued in him, of which he Widow's Estate was one, it being an Excresence, which by the Cultom of the Manor grows put of the Estate of the Husband; and for that Reason she shall enjoy that Estate. Hob. 181. \* How- \* Roll. 2. erd versus Bartlett.

S. C. by the

Name of Walter versus Bartlett.

4. The Lord of the Manor where there was a ike Custom, as in the Case last mentioned, made Feoffment of a Copyhold Tenement to the Husband who has the Copyholder, who afterwards died feised thereof;

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of the idow, of; and the Question in a special Verdict in Eject. ment was, Whether the Wife should have her Widow's Estate, and adjudged she should not, be cause the Custom was destroyed by the Feoffment; but if it had been made to a Stranger, and not to the Husband, it had still remained a Copyhold as to the Widow, and she should enjoy it during her Life. 2 Cro. 126. Lashmere versus Averie.

4 Mod. 251. S. C. 3 Lev. 385.

S. C.

5. Custom of a Manor was, that the Copyhold Tenants, having a Mind to alien their Copyholds. might surrender them into the Hands of two Customary Tenants out of Court, &c. and that one Scot, being a Copyholder of Inheritance, furrendered the same as aforesaid, to the Use of the Plaintiff and his Heirs, and died, leaving a Wife, who claimed her Widow's Estate by Virtue of the Cufrom of the Manor; and that at the next Court, after the Death of her Husband, his Surrender was presented, and the Surrendree admitted; and now in a special Verdict in Ejectment the Question was, Whether the Surrendree or the Widow had the better Title; and it was adjudged against the Widow, because her Title did not commence till after the Death of her Husband, and then only to such Lands of which he died feised; but the Title of the Surrendree began from the Surrender, for his Admittance shall relate to it. I Salk. 185. Benjon verfus Scott.

6. Where by the Custom of a Manor, the Wife of a Copyholder shall have her Widow's Estate upon the Death of her Husband, if he after his Marriage, and before his Death, surrenders his Estate into the Hands of the Lord, to the Use of T.S. and dieth, altho' the Surrendree is not admitted; yet the Wife is barred of her Widow's Estate, because the Husband must be a perfect Copyholder, and feiled of the Copyhold at the Time of his Death, and must have such an Estate in Law lest in him, out of which her Customary Estate may arise.

Willi, B. R.

7. The Husband, who was a Copyholder of a Manor where the Custom was, that the Wife should have the Widow's Estate, &c. was attainted of Felony; the Question was, Whether after he was exe-

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cuted, the Widow should have her Free Bench; and Justice Winch, who was alone in Court, held that the should not without a special Custom for that Purpole. H. 19 fac Allen versus Booth.

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8. Grant of a Copyhold to three for their Lives fuccessively; afterwards the Grantor made a Lease of the same Lands to T. S. for thirty-one Tears, to have and to hold the same, from and immediately after the Death of the Survivor, or other Determination of the faid Copyhold Estate; the Survivor died, and then his Widow entered and claimed her Free Bench, and affigned her Right and Title to the Plaintiff; and in a special Verdict in Ejectment, the Question was, When this Lease of thirty-one Years should commence, either upon the Death of the Survivor of the three Copyholders, or after the Determination of the Widow's Estate of such Survivor; it was infifted that it shall not commence till after the Free Bench of the Widow is determined, because that Estate is Parcel of the Estate of her Huiband, which is very true as to some Purposes, but not as to this Leafe, being in the Cafe of a Collateral Limitation; for in Point of Limitation it thall commence immediately after the Death of the Huf-

band, though not in Point of Interest till after the Death of the Wife: But Serjeant \* Levinz, who re- \* Lev. 20. ports this very Cale, tells us that it shall not com- Chantrell mence at all till after the Death of the Widow, ver. Randle. because then and not before, the Estate of the Hus-

band is determined. 2 Sid. 167. Clerke verlus Candle.

9. Where the Husband Copyholder makes a Moor 758. Leafe for Years of his Lands, warranted by the S. C. Custom of the Manor so to do, his Widow who + So if he achath a Title to her Widow's Estate shall not avoid cept a Lease such Lease, unless there is a special Custom to en-from the Lord, able her to to do. 2 Cro. 36. Farley's Cafe. Moor the Copyhold is destroy d, 758. S. C. by the Name of Holder versus Farley. and by Confe-

quence the Widow can have no Estate by the Custom. W. Jones 462. Dagworth ver. Radford.

10. The Free Bench of a Widow is not so large as an Estate for Life, because she is to enjoy it only, dum sola & casta vivit; therefore where a Custom was alledged, that a Widow of a Copyholder should enjoy her Husband's Copyhold Estate during ber Life, and the Evidence to prove such Custom was, that she had a Title to her Widow's Estate : Ad. judged this was not a sufficient Proof of the Custom,

\* 4 Rep. 29. because it was of a \* less Estate than claimed by Down versus the Custom. Dyer 192. Linsey versus Dixon.

Hopkins. S. P. Cro. Eliz. 323. S. C.

Manors. (B) 5. S. C.

11. The Custom is, That the Widow shall enjoy her Free Bench quamdin casta vivit: Adjudged that if the live otherwise than chaste, and the Lord having no Notice of it, admits her to the Copyhold E. state, of which her Husband died feised, such Admittance shall bind the Lord. 4 Leon. 240. Wheeler's Case.

I Roll. Abr.

12. The Widow of a Copyholder claimed he Let. (M) 1. Free Bench, and prayed to be admitted, which the Steward refusing, she brought an Ejectment; and adjudged that her Estate ariseth out of the Estate of her Husband, and his Admittance is the Admit tance of her in Remainder; but if it had been ne ceffary, that she should be actually admitted, the had done all in her Power to procure it; but in this Case her Estate being created by Custom, that shall be an Admittance in Law. Hutt. 18. Forden versus Stone.

Moor 394. S. C. Goulds. 189. S. C.

13. The Custom was, that the Widow should enjoy her Free Bench dum fola vixit; the fowed the Land, and before the Corn was ripe she married: Adjudged that the Lord of the Manor shall have the Crop, because she had determined her Estate by her own Act; but if she had made a Lease of the Lands, and the Leffee had fowed the Lands, and then the had married, the Leffee thall have the Corn, and not the Lord, because her Act shall not turn to the Prejudice of a third Person: 5 Rep. 116 Oland's Case.

Hob. 181, 244. I Roll. Abr. 502.

14. She who hath a Widow's Estate by the Cu from of a Manor upon the Death of her Husband Copyholder for Life, may make a Lease for Years as any Copyholder may; for by the Death of be

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Husband the Law casts the Estate upon her before Admittance, for her Estate is only a Branch of her Husband's Estate, and no Fine is due from her to the Lord, but then her Husband must die seised; for if after Marriage he doth furrender his Estate into the Hands of the Lord to the Use of another, and then dieth, his Widow shall be barred.

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# fines and Recoveries of Copyholds.

(A)

AFTER various Opinions, it was at last fettled in the Reign of Queen Elizabeth, that Copyhold Lands might be entailed by the Custom of the Manor; it was in the next Place found to be expedient, that such Entails should be discontimued and barred; and the first Method for that Purpole was, that the Tenant in Tail in Possession should commit a Forfeiture; then the Lord should enter for the Forfeiture, and make a new Grant of the Copyhold, and by this Means the Estate-Tail would be discontinued and gone; but then there must be a Custom to warrant this Point; and some Judges were of Opinion, that there could not be any fuch Custom, because by the Seifure, the Copyhold Estate was destroyed. Stile 450.

2. At last fuch Custom was allowed to be good, and that the Forfeiture by Custom was but in the Nature of a Surrender or Common Recovery made and juffered by the Tenant in Tail, to bar his Issue or

Remainders. Sid. 314. 2 Saund. 422. 3. As to the Surrender made by a Tenant in Tail. by the Custom of the Manor, that was likewise a Bar, but then Proof must be made of a Plaint in Nature of a Formedon brought against the Surren-dree, and \* Judgment given for him against the Iffue in Tail, or him in Remainder. Poph. 128. Moor 172. Lee verius Brown.

\* Hill verfus 2 Brownl. 121. S. C.

4. In the later End of the Reign of Queen Elizabeth, a Common Recovery in the Lord's Court without a Custom to warrant it, was not allowed to bar the Remainder; which appears by the fol.

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Cro. Eliz. 372. S. P. Moor 358. S. P.

5. ff. In a special Verdict in Trespass, the Jury found that the Lands, &c. were Copyhold demilable in Fee, in Tail, or for Life; and that T. S. was feised of the said Copyhold in Tail, Remainder in Tail to E. G. and that the faid T. S. the Tenant in Tail in Possession suffered a Recovery thereof in the Court-Baron of the Manor; and declared the Uses to W. R. Gc. and died without Issue, and they found

a Custom to warrant it, will not bar the Remain-

1 Lev. 136.

Raym. 164.

\* Such a Re- that there was no \* Custom for Common Recoveries be. covery, without fore that Time used in that Manor: Upon arguing this special Verdict, it was adjudged, that this Recovery should not bar the Remainder-Man, because 'tis the Nature of a Recovery to bind upon a Recompence in Value: Now in this Case there could be no such Recompence in Value of the Land of the Common Vouchee; for if it should, then the Lord of the Manor would lose his Fine, and the Tenant who recovers in Value would hold the Land without any Admittance to it; and without any Grant from the Lord, which is effentially against the Nature of a Copyhold. Cro. Eliz. 391. Clunn versus Peale.

Cro. El. 372. S. C. Moor 358. S. C.

6. About the same Time, but after the Judgment in the Case before-mentioned, as reported by Justice Croke, we are told by my Lord Coke, that if a Recovery be had upon a Plaint in Nature of a real Action against a Tenant in Tail of a Copyhold, this is a Discontinuance; because since Plaints are warranted by Custom, 'tis incident that a Recovery upon such Plaints should make a Discontinuance of the Estate-Tail, and he tells us, the like Judgment was given in Clunn and Peafe's Cafe last mentioned, which is contrary to the Report of Jultice Croke, Gc. 4 Rep. 23. Dell versus Rigden.

Brown!. 121. S. C.

7. About the same Time it was likewise adjudgthat where T. S. the Tenant in Tail of a Copyhold in Possession, made a Surrender thereof to E.G. in Tail, with several Remainders over in Tail, that a Common Recovery suffered by the Tenant in Tail, in the Lord's Court shall not bar these Remainders in Tail, without a special Custom for that Purpose.

Moor 188. Hill versus Morfe.

8. Copyholder for Life Suffered a Common Recovery in the Lord's Court as Tenant in Fee; this is no Forfeiture of the Copyhold, because it was in a Court-Baron, where the Freehold is not concerned; and the Lord of the Manor could not take Advantage of it, if it was a Forfeiture, because he is a Party to the Recovery. 1 Med. 199. Bird ver-

9. The Father being Tenant for Life, of a Copy- Forfeiture. hold, Suffered a Common Recovery in the Lord's Court; (K) pl. 6. the Son entered supposing this to be a Forseiture, S. C. and furrendered to the Plaintiff, and in a spe-

cial Verdict in Ejectment, it was adjudged, that this Surrender was void, because the Suffering this Recovery made no Forfeiture without a particular Custom to make it io. 2 Mod. 32. Keen versus

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10. A Recovery was suffered in the Lord's Court, upon a Plaint there in Nature of a Writ of Right; and a Question was upon a Motion in the Common Pleas. Whether a Precept might be awarded out of that Court to execute the Recovery, and to put the Recoverer in Possession by a Posse manerii; and adjudged it could not, because Force cannot be justified in such Cases without Leave of the King's Courts at West-

3 Leon. 99. minster.

11. A Copyholder of Inheritance levied a Fine in the Lord's Court (his \* Heir being beyond Sea) \* In King and after Proclamation made at three teveral Courts, versus Dillifor the Heir to appear, and be admitted according fton's Cafe, the to the Custom of the Manor, he did not appear at like Judgeither of the faid Courts; whereupon the Lord fei- ment, where sed the Copyhold Estate as forfened: Adjudged that the Infant the Heir being beyond Sea, this Fine and Nonclaim come and be should not bar him; but if he had been in England admitted; when the first Court was held, and the first Procla- Contra Hole mation made, and afterwards had gone beyond Sea, Ch. Justice. then after two Proclamations more, he should be barred, because he shall not delay or defeat the Lord of his Fine by his own voluntary Act. 8 Rep. 99, 100. Sir Richard Letchford's Case.

12. Co-

12. Copyholder for Life, Remainder to T. S. for Life: the Copyholder for Life accepted a Conveyance of the Freehold from the Lord by Bargain and Sale; and afterwards he levied a Fine of the same Lands and five Years passed without any Claim: Adjude. ed that this Fine and Nonclaim shall not bar T.S. in Remainder for Life, because the Acceptance thus made of the Freehold, did not determine the Estate of the Copyholder, but only as to himself and the Lord: for it shall still have a Being as to him in Remainder, and to Strangers; for the Estate of the Remainder-Man is to entirely preferved by the Castom, that no Act of the particular Copyholder for Life shall hurt it; as for Instance in another Case, Copyholder for Life, Remainder for Life; the Copyholder for Life committed a \* Forfeiture; this (K)pl.7.S.P. shall not be prejudicial to him in Remainder, nei-Forfeiture. (L) ther shall he enter, but the Lord of the Manor, and

\* Forfeiture. 15. S. P. he shall hold it during the Life of him who com-

3 Rep. 77,

9 Rep. 105.

fus Tucker. 13. Tenant by Copy of Court-Roll who hath no Title to the Inheritance cannot bar the Lord by a Fine, therefore if he make a Feoffment that a Fine

mitted the Forseiture. 2 Brownl. 153. Bicknell ver-

shall be levied, 'tis void.

14. Where one entered upon and put out a Copyholder, and levies a Fine as a Diffeisor, and the Copyholder suffers five Years to pass after the Disfeifin and Fine, and without making any Claim, the Interest both of the Copyholder and the Lord are bound for ever; for this was not a Fine levied by Covin, because the Levying it was lawful, and the Lord must of Necessity know of the Differlin, and the Disseisee might re-enter or bring his Action within five Years: So if a Copyholder makes a Feoffment in Fee upon a good and valuable Conlideration, and the Feoffee levieth a Fine with Proclamations, and five Years pals, the Lord is barred; but if a Copyholder levy a Fine, and five Years pass, the Lord is not barred, because the Copyholder having no Freehold, the Fine is void.

Guardian. See Pleadings.

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peirs to Copyhold Estates, what Ads they may do befoze Admittance, and other Chings concerning Peirs. See Pleadings. (A) 8.

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(A)

See Husband and Wife. (A) 4. Pleadings. (A) & Surrender. (A) 43.

I. MY Lord Coke tells us in one of the Resolutions in Brown's Case, that the Heir of a Copyholder before he is admitted, may take the Profits of the Estate, and \* surrender it to the Use of \* See Surrenanother; but this shall not be prejudicial to the der. (A) 43. Lord in respect of his Fine; that after Admittance, S. P. the Heir in Pleading may alledge it as a Grant, so he may alledge the Admittance of his Ancestor as a Grant, and shew the Descent to himself, and that he entered, and this without any actual Admittance; but he cannot plead, that his Father was seised by Copy of Court-Roll, and that he died seised, and that it descended to him, because in Judgment of Law, a Copyhold is only a particular Estate at the Will of the Lord, though descendable by Custom. 4 Rep. 21. Brown's Case.

2. He likewise tells us in the last Resolution, in Bunting and Lepenwell's Case, that if Cestus que Use of a Copyhold Estate dies before Admittance, his Heir shall be admitted. 4 Rep. 29. In Bunting versus Lepenwell.

3. The Heir of a Copyholder may enter before Moor 596. Admittance, and make a Leafe of the Copyhold E-S. C. Italian according to the Custom of the Manor; in 2 Cro. 105. this Case the Husband was seised of the Copyhold S. C. in Right of his Wise, who had the Inheritance, Husband and and he alone without his Wise surrendered to T. S. Wise. (A) and his Heirs, who was admitted; then the Huspand and her Heir entered before Admittance; and adjudged lawful, because the Surrender made by L. 4 his

his Father was no Discontinuance of the Estate of his Wife, fo as to put her Heir to his Plaint, in Nature of a Sur cui in Vita. Poph, 39. Bullock ver. fus Dibley.

Moor 271. S. C. Cro. Eliz. Litt. Rep. 234.

4. And fince an Heir to a Copyhold may enter. and make a Lease before Admittance, because heis in by Descent, it hath been ruled, that such Lessee if ejected, may maintain an Ejectione firma notwith. standing the Heir, his Lessor is not admitted. I Leon. 100. Rumney versus Evers.

5. The Heir of the Surrenderor shall take the Profits of a Copyhold Estate till the Surrendree is admitted, unless the Lord accept the Rent of the Surrendree, which may amount in Law to an Admir-

tance. Godb. 269. Treswell versus Welch.

Moor 125. S. C. Dyer 291.

Admittance.

(F) pl. 4.

S. C.

6. A Copyholder of Inheritance had Issue a Son and Daughter by one Venter, and a Daughter only by another Venter, and died, his Son being then about two Months old, and the Copyhold being then in Leafe for twelve Years by License from the Lord rendring Rent; the Death of the Copyholder was presented, and the Infancy of his Son and Heir, who afterwards died before he was admitted; and the Question in a special Verdict in Trespass was, Whether his Sifter of the whole Blood should inherit; and adjudged that the should, and not jointly with her other Sister of the Half-Blood, because the Descent of the Reversion to her Brother after the Determination of the Leafe for Years, gave him a Title to the Rent even before Admittance, and to enter for Non-payment; and if so, then it was possessio fratris; and such a Possession makes his own Sister Heir of a Copyhold Estate, as well as to a Freehold. I Bulft. 41. Ayliffe versus Chapley.

7. Where the Heir of a Copyholder will not come and be admitted after three Proclamations made at three several Courts of the Manor, the Lord may seise quousque the Heir will be admitted, and this he may justify without a particular Custom to enable him so to seise, but he cannot feise it as forfeited without a Custom for that Purpole; and in every Proclamation so made, 'tisa fafe Way to mention the Lands to which the Heir is to be admitted, I Leon. 63. The Earl of Salisbury's

Cafe.

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8. Where a Copyhold of Inheritance descends to an Heir, it shall not be Assets in his Hands, because 'tis an Inheritance created by a Custom; 'tis true, the Descent is directed by the Common Law, but that Law doth not allow any other collateral Qualities which do not concern such Descent. 4. Rep. 22. a.

9. A Copyholder of Inheritance died, and the Lord of the Manor admitted a \*\* Stranger: Adjudged that the Heir of the Copyholder might enter, and bring an Action of Trespass without being admitted himself. Noy 172. Simpson versus Gil-

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But this shall not prejudice the Lord of his Fine 4 Rep. 22, due upon the Descent; he may also bring Trespass 23. before Admittance. 4 Rep. 24.

10. A Copyholder of Inheritance died, his Heir 8 Rep. 100. being beyond Sea; the Lord of the Manor held Courts and made Proclamations, and then feifed for Want of a Tenant; afterwards, as foon as the Heir came into England, he applied to the Lord to be admitted, which he refused; this was adjudged no Forseiture; but if he had went beyond Sea after the first Proclamation made, he shall be bound-

and betrained or property of a commission of the other

beriot.

<sup>\*\*</sup> Such Stranger is but Tenant at Will and not a 3 Leon. Diffeifor to the Heir, because he came in by the As- Case 274. sent of the Lord.

### Deriot-Custom.

#### (A)

I. IN some Books, 'tis wrote Hariot, but improperly, for the Word is of Saxon Derivation, Int. 185.b. and my Lord \* Coke tells us from Here, which in that Language signifies a Lord and Geat which signifies a Beaft, and so he will have it to be the Lord; Beaft; but his Mistake in this Derivation, as like. wife in some others, was only vitium temporis, when the Saxon Tongue was not so well known, as 'tis now; for the Word Heriot is derived from the Saxon Here, which doth not fignify a Lord, but an Army, and Geat lignifies fusus, so that the Saxon Heregeat, from whence our Word Heriot is derived, figuifies Provision for War, or a Tribute or Relief given to the Lord of the Manor for his better Preparation to be in the Army; thus Heretoche fignifies in that Language a General of an Army; and Hereteams those who follow the Army; and that learned Antiquary Sir Henry Spelman tells us, that Heriotum est militaris supellectilis prastatio, quam obeunte Vassalo Dominus reportavit in sui ipsius munitionem; and by the Laws of King Canutus the Dane (under the Title Heriot) it appears that so many Horses and Arms were to be paid at the Death of great Men, as they were respectively obliged to keep in their Life-time for the King's Service; but this Heriot was paid tong before the Reign of Canutus, and not only in warlike Weapons, but in Money and other Things, for those Thanes, who held their Lands of the Saxon Kings, paid † fifty Pieces of Gold, four Horses and two Swords for an Heriot.

† Mancufus Anri were Square Pieces

of Gold, each of the Value of Half a Crown.

2. It is now taken for the best Beast which the Tenant hath at his Death, and in some Manors the best Piece of Plate, or other best Goods; and this is called Heriot-Custom, (i. e.) where an Heriot hath been paid Time out of Mind by Custom, after the Death Deat may ipon Realt and t

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7. by I all l depr

brou frau Death of the Tenant; and for this Heriot the I ord

may \* seise, and not distrain, because immediately \* See pl. 9.

upon the Death of the Tenant, the Property of the S. P.

Reast is vested in him by Virtue of the Custom,

and therefore he may seise it as his proper Goods, whereever he sinds it.

3. And this differs from Heriot-Service, as may be fen under that Title, and it differs likewise from a

Relief, which fee in Title Relief.

4. Where many purchase Lands jointly, this He- 8 Rep. 105. riot shall not be paid till after the Death of the 1 Inst. 185. b. Survivor; so where the Tenant deviseth all his Goods, and dieth, yet this Heriot shall be paid, for the Law preferreth the Custom before the Will; and it hath been held, that it shall be paid before a

Mortuary.

5. By the Cultom of a Manor, a Heriot was to be paid upon every Alienation or Surrender, &c. A Copyholder aliened Part of his Lands to one, and Part to another, and kept the other to himself, and furrendered those two Parts to the Use of the two Alienees; the Question was, Whether he should pay more than one Heriot; it was infifted, that this being an Heriot-Cultom, which is against Common Right, it ought not therefore to be multiplied; but adjudged that an Heriot shall be paid for the Alienation of each Part; for otherwise it would be in the Power of all Copyholders to defeat the Lord of his Heriots, by making Alienations of Parcels; and in this Case the Alienor shall pay the Heriots, because he is still Tenant of the Manor; but upon every Alienation afterwards the Alienee shall pay them. Palm. 342. Snag versus Fox.

6. Where the Custom is, that the Lord shall have Postea (B) an Heriot upon the Death of every Tenant, in such pl. 2. S. C. Case if he purchase Part of the Lands, the Heriot is not extinguished, but it shall still be paid. 8 Rep.

102. In Talbot's Cafe.

7. The Tenant held his Lands of several Lords See (B) pl. 5. by Heriot-Custom, and he made a fraudulent Deed of all his heriotable Cattle, being twenty Horses, to deprive the Lords of their Heriots; one of them brought an Action upon the Statute 13 Eliz. of fraudulent Conveyances; and in this Case the Judges

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were of feveral Opinions; one of them held that the Action was not well brought by one Lord a. lone, but all of them ought to join, but the reft were against him in that Point; two Judges were of Opinion, that the Action would lie for the Value of all the Horses; but the Opinion of Manmood Ch. Baron, seemed to be the most reasonable,

\* 2 Leon. 8. that the Action would lie for the Value of \* one Creswell ver. Horse and no more, because the Lord was entitled Cook, and but to one Heriot. Dyer 351.

but one Horse

was frandulently convey'd away in Respect to him.

8. A fingle Woman was Tenant for Life of a Copyhold held of the Manor of H. where the Custom was, to pay the best Beast for an Heriot upon the Death of every Tenant; afterwards she married, and died: Adjudged that the Lord shall not have a Heriot, because the Tenant who died was a Feme Covert who cannot have any Goods by Law in the Life-time of

her Husband. 4 Leon. 239. pl. 277.

9. In Replevin, the Defendant made Conusance as Bailiff of the Lord of the Manor, &c. fetting forth, that the Plaintiff's Father was Tenant thereof, O'c. and that the Cultom there was for the Lord for the Time being to have a Heriot of each Parcel of Land held of that Manor, of which the Tenant died feised; and that the Plaintiff's Father died feised of several Parcels of Land held of that Manor, (but did not fay of what Estate be died seised); and that by his Death such Heriots were due to the Lord, in whose Right he justified the Taking nomine Heriotorum: It was objected that he ought to shew of what Estate the Father died seised; but adjudged that it was sufficient to alledge, that such Heriots were due upon the Death of every Tenant dying seised. I Bulft. 101. Siliard's Case.

r And. 298. Moor 540.

10. In Trespais for Taking an Ox, Oc. the Defendant pleaded, that the Plaintiff was seised in Gouldt. 191. Fee of an Acre of Land which he held by the Service of rendring the best Beast after the Death of every Tenant who died feised of that Acre, &c. my Lord Anderson, who reports this Case, tells us, the Question was, Whether the Defendant ought to distrain (as have Lord and ' take fon (

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he had done) for this Heriot; and that it was held he might diftrain, and not feife, because this Heriot was Parcel of the Services, and those lie in Render, and not in Prender; but all the other Reporters of this Case tell us, that this Judgment was reversed in B. R. where it was held, that the Lord ought to have feised, because where the Tenure is, that the Lord shall have the best Beast, this is Heriot-Custom; and 'tis in the Election of the Lord which he will take for the Best, but he may certainly seise, by Reafon of that Property which he hath in this Heriot : for 'tis his own by Virtue of the Tenure, and therefore may feise it where-ever he finds it. Cro. Eliz. 590. Odiham versus Smith.

11. Tis for this Reason, that where in Replevin the Defendant justified for an Heriot-Custom, that tis an ill Plea for the Plaintiff to reply, that the Place where that Heriot was taken, was out of the Manor; for a Heriot-Custom is always claimed as the proper Goods of him who feifes, which may be done in any Place where 'tis found. Bendl. 18. Gre-

ham versus Gainsford.

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12. In Trespass the Defendant justified the Breaking and Entring the Close, and Taking the Ox, and in his Plea set forth the Cultom of the Manor of H. for the Lord thereof to have the best Beatt of every Tenant of the Manor who died seised of lands there; and if fuch Beast was drove away before the Lord or his Servant could \* seise it, then \* But if an he used to have the Beast of any other Levant and Heriot is Conchant on the same Lands; then he sets forth that seised where T.S. a Tenant of Lands held of that Manor, died none is due, leised; and that his best Beast was due to the Lord the Person for an Heriot, which was drove off the Land before whose Beast it could be seised; whereupon he justified the Ta- was seised, king the Plaintiff's Ox being Levant and Couchant Metion of on those Lands; and upon Demurrer to this Plea Trover or it was adjudged an + unreasonable Custom; and an Trespass a-Objection was made to the Manner of Pleading, be- gainst bim cause he justified the Taking the Ox, being Levant who seised it. and Couchant, &c. but did not fay that it was taken Cro. El. 824. Nomine Herioti. Dyer 199, 229.

Bishop ver. Lord Moun-

tague. 2 Cro. 50. S. C. † See Moor 16. Wilson ver. Wisc. S. P.

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13. Anno 17 Car. 1. the Chief Justice Bramston with of a contrary Opinion, for he held it to be a good Custom, because such Seisure is only as a Pleder and Means to get the Heriot. March 165. Thorn versus Tiler.

Moor pl. 58.

lay of every one who held Lands of the Said Manor.

14. In Trespass for Taking his Horse, the De fendant justified as Lord of the Manor of H. fet. ting forth a Custom, that he, and all his Predeces. fors, Lords of the faid Manor, Time out of Mind, have used to have the best Beast in the Name of an \* And did not Heriot, after the Death of \* every one dying within the faid Manor, &c. and fo brings his Cate within the Cuftom, &c. and upon a Demurrer to this Plea, it was infifted to maintain it, that a Culton to seise for an Heriot upon the Death of every on dying within that Manor, might have a reasonable Commencement, because the dead Man being refident in the Manor in his Life-time, might have the Comfort and Help of the Tenants there, during his Sickness, and the Lord might lose their Service whilst they were attending him to the Grave; and laftly, because he was buried within the Manor: But adjudged that though this Custom might have a reasonable Commencement in Respect to the To nants, because it might begin when their Tenura were first made; yet it can never be good to bind Strangers; and therefore the Plaintiff had Judgment in C. B. which was affirmed upon a Writ of Error in B. R. Cro. Eliz. 725. Parker versus Comberford.

### heriot Service, or by Refervation. See (A) pl. 9.

(B)

HIS is where the Tenant holds by fuch Service as to pay a Heriot at his Death, which Service ought to be expressed in the Deed it Coke, Copy- felf, and for this Heriot the Lord may diffrain of feife, that is, he may diffrain any Beaft on the Land hold 31.

and may seise any Beast of the Tenant; and if he purchases Part of the Tenancy where a Heriot-Service is to be paid, that Service is extinguished, but its not so, if he purchase Part of the Tenancy out of which a Heriot-Custom is to be paid.

2. All entire Services, such as to render an en-Antea (A) tire Chattel either of Profit or Pleasure, upon the pl. 5. S. C. Death of a Tenant, shall be multiplied by Alienation of any Part of the Tenancy, and likewise by the Purchase of Part by the Lord, shall be extinguished; therefore where a Tenant holds Lands by Fealty, Suit of Court, and an Heriot to be paid after his Death, this is Heriot-Service, which differs from Heriot-Custom, for that is where the Lord of the Manor hath by Custom, Time out of Mind, had the best Beast of every Tenant dying seised, &c.

8 Rep. 102. in Talbot's Cafe.

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3. In Trespass, a special Verdict was found, that the Father who held Lands of the Manor of H. by Fealty, Rent, and rendering an + Heriot, Gc. in + This is He-Consideration of natural Love, and of the Mar- riot-Service. riage of his Son with E. G. made a Feoffment of the faid Lands to his Son in Fee, who, to the Intent his Wife should be endowed thereof, if the Father survived him, made a Re-demise of the said Lands to his Father for forty Years, if he should so long live: The Marriage took Effect, the Son did Suit to Court, and the Father constantly paid the Lord's Rent, who upon his Death took the best Beast for an Heriot: Adjudged, that fince the Jury found no \* \* Fraud in the Father in making this Feoffment, the Court cannot take it to be fraudulent, and made on Purpose to deprive the Lord of his Heriot. 2 Brownl. 187. Tey versus Littleton.

4. In Replevin, &c. the Defendant avowed for Hutt. 4. S. C.: Heriot-Service, and did not fet forth what the He- 1 Cro. 186. riot should be, either the best Beast, or any other

Thing;

<sup>\*\*</sup> By the Statute 13 Eliz. 'tis enacted, That all 13 Eliz. c. 5. fraudulent Gifts, Grants, &c. to defraud a Lord of Sce(A) pl. 6. his Heriots shall be void, and shall forfeit the whole Value of the Goods; one Moiety to the King, the other to the Party grieved.

Thing; the Plaintiff replied, that the Tenant at his Death nulla habuit animalia; and upon a Demurrer to this Replication the Avowry was held ill, because the Defendant did not set forth what the Heriot should be. Hob. 176. Shaw versus Tayler.

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5. In Replevin, the Defendant made Conusance as Bailiff of T. S. setting forth that the laid T. S. was seised of the Manor of H. and that E.G. was seised of Lands held of the faid Manor by Rent and Heriot- Service, payable after the Death of every Te. nant; and that the faid E. G. being feifed as afore. faid, died seised, and likewise possessed de animali. bus & catallis; and for that an Heriot was not paid he, by the Command of the Lord, distrained; and upon a Demurrer to this Conusance, it was object. ed that it was ill, because it did not set forth what was the best Beast, either a Horse or an Ox, &c. nor the Price or Value thereof, so that the Plaintiff could not tell what to offer, that he might have his Beaft again; but the Objection was disallowed; for the Defendant himself might not know what was the \* best Beast, or the Value thereof; and in this Case it appearing that the Plaintiff had drove of several Cattle before this Distress was made, therefore at his Peril he ought to tender sufficient Recompence for this Heriot. Trin. 18 Eliz, Dicker vertus Higgins.

\* Cro. Eliz. 590. See Plowd. Com. 96. Cro. Car. 189, 260. Major versus

Brandwood, S. P. W. Jones 300. S. C.

6. The Bishop of Gloncester being seised of a Manor, Cc. demised twenty Acres, Parcel of the Demesnes, to the Father, during the Lives of his three Children, naming them, and the Survivor of them, rederving a Rent, and also a Heriot of two of his belt Bealts upon the Death of each of the Children; atterwards the Bishop made a Lease of the whole Manor to T. S. for Years, rendring the antient Rent, then one of the Children died: Adjudged, that T. S. the Lessee of the Manor shall have the Herin, and not the Bishop. Winch 57. Bishop of Gloncester verfus Wood.

Hetly 57. S. C.

7. Lease of Lands to Robert Chichester and his Alfigns for ninety-nine Years, if he and T. S. and E. G.

# periot Service, or by Refervation.

E. G. should so long live, paying at each of their Deaths, his or their best Beast in the Name of an Heriot; provided that no Heriot shall be paid upon the Death of T. S. or E. G. if Robert Chichester shall be then living, who affigned this Leafe to Score, and died: The Question was, Whether the best Beaft of Scorey the Affignee shall be taken for an Heriot: And adjudged that it should not, because the Refervation of an Heriot upon this Lease is collateral to the \* Rent, and being against common Right, \* See pl. 10. ought to be + strictly pursued; now by this Lease the + See pl. 9. helt Beast of Robert Chichester was reserved for an Heriot, which can never be intended the Beaft of the Affignee, for fo long as he had any Property in it, it could not be the Beaft of Chichester. Cro, Car. 313. Scory versus Randall.

8. An Heriot reserved upon a Lease, though 'tis sometimes called an Heriot-Service, yet 'tis not like the Case where the Lands are held by the Service of paying an # Heriot, because in the first Case, the # This is Hea proper Remedy is either by Diftress, or by an Ac- riot-Custem. tion of Covenant grounded on the Contract; for the Lessor cannot seise, as a Lord of a Manor may do, the best Beast of his Tenant, who holds of him by the Service of paying such Beast for an Heriot, but then fuch Seisure must be within the Manor.

Keilw. 82, 84. b. 9 Lease for ninety-nine Years, if Joan, Anthony and 2 Mod. 93. John Ingram, should so long live, rendring an He-S. C. riot after their several Deaths successively, but John 1 Vent. 314: died first, and then Joan; the Question was, Whe- S. C. ther an Heriot was due at her Death, because she 2 Lev. 210. died out of Course, and not successively, as named S. C. in the Refervation of the Heriot, which is a Thing not due of \* common Right, and therefore the Refer- \* See pl. 7. vation ought to be strictly pursued, for otherwise no Heriot is due; this Point was not adjudged; but a Distress being taken for this Heriot, and in Replevin the Defendant avowed the Taking, but did not let forth that Anthony was living at the Time of the Distress taken; for that Reason the Avowry was held ill, for the Lease was for ninetynine Years, if Joan, Anthony and John should so long live. Now John and Joan were dead, and if

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Sid. 437.

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S. C.

1 Lev. 294.

Anthony was not living, then the Leafe was deter. mined, and by Consequence the Distress was unlawfully taken. I Mod. 216. Ingram versus Tothill.

10. In the Case last mentioned it appears, that an Heriot reserved upon a Lease cannot be demanded and paid after the Leafe is determined, but an Heriot which grows by \* Tenure may be feifed as foon as \* This is He 'tis due, and after 'tis due; neither is an Heriot due before the Commencement of a Leafe; as for In-† I Vent. 9, stance, † There was a Lease for ninety-nine Years. if the Leffee and Julian Carver, or either of them, should so long live, which Lease was to commence after the Death of Cecilia, paying Rent, Gc. and also 3 l. in the Name of an Heriot, after the respective Deaths of the said Lessee and Julian; afterwards the Leffee died in the Life time of Cecilia, which was before the Leafe was to commence; and for that Reason it was adjudged, that the Lessor should have no Heriot; for a Heriot reserved on a Leafe, is in Nature of a # Rent, which must go with the \* Reversion, but here the Lessor could have no Reversion, because the Term for Years was

\$ See pl. 7. & pl. 12.

1 Lev. 294. S. C.

Carver. See March 46. S. P. Cro. Car. 313. S. P. 11. The same Case is reported in other Books by the Name of Lian versus Caren, where we are told that an Action of Covenant was brought for the faid 31. referved as aforesaid, in the Name of an Heriot; and that the Defendant demurred to the Declaration, supposing that the Heriot was not due unless the lessee had died after the Commencement of the Leafe; and they all agree that so it was adjudged; only Justice Ventris tells us, that the Refervation was of other Things, besides 3 l. for an Heriot, (viz.) a yearly Rent, two Days Work in Harvest, two Capons at Christmas after the Commencement of the Leafe, and 3 l. in the Name of an Heriot after the Death of A. and B. fo that all the other Refervations in this Lease being after the Commencement of the Leafe, the Refervation of an Heriot must be so too, because Clauses in Company are to be expounded by one another. I Vent. 91. Lian versus Carem.

not yet commenced. 2 Saund. 165. Lanyan versus

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12. Lease for ninety-nine Years to Dorothy Edgcomb 3 Mod. 230. and her Assigns, if she the said Dorothy and Mar. S. C. pery Upton should so long live, rendring the year- 3 Salk. 181. ly Rent of 20 s. and likewise after the Decease of S. C. the faid Dorothy and Margery, her or their best See the Plead-Bealt in the Name of an Heriot; in an Action of ings in this Trespals, brought for a Distress taken for this He-Apendix, riot, the Defendant set forth all this Matter in his Heriot Ser-Plea, and derived a Title to himself of the Rever- vice. pl. 12. fion after the Determination of this Leafe; and that Dorothy married the now Plaintiff Osborne, and that he was possessed, &c. in the Right of his said Wife, and both the and Margery were dead, and to justified the Taking, Gc. for an Heriot after the Death of Margery; the Plaintiff craved Oyer of this Leafe, and demurred specially to this Plea, becruse it did not appear that the Taking was on the Lands charged with this Heriot; but that Point was not much infilted on, but that an Herio: was not payable in this Cafe, because it being reserved on Leafe, 'tis an Heriot-Service, and by Consequence of the same Nature with all other Services referved on Leafes, (i.e.) to be paid whilft the Leafe is in Being; but here the Term was at an End upon the Death of Margery, and an Heriot is no more payable afterwards, than a Rent after the Leafe is determined; and of this Opinion were two Judges, because there was no Reversion after the Lease was at an End; but two other Judges held, that the Defendant had a reversionary Interest at that very Infant of Time when Margery died, and that the Distress shall relate to that Time; so that the Court being divided, it was adjourned into the Exchequer-Chamber. Lutw. 1366. Osborn verius Sture. 13. In Trespass for Taking a Cow, the Defendant pleaded, that T S was possessed of the Place where,

To and that he feifed the Cow as an Heriot Service upon the Death of E. G. and upon a Demurrer to this Plea it was objected, that the Defendant did not fet forth that he feifed the Cow within the Ma- \* This muft nor; but adjudged, that for an \* Heriot-Service a be understood Man may teile any where, but he cannot diffrain of an Herictfor it out of the Manor. I Salk. 356. Austin versus Service by Te-Bennet.

nure, for that

14. A Still continues.

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I Salk. 188. S. C. Mod. Cases. S. C. Custom of Manors. (C) 30. S. C.

14. A Copyholder for Life held of the Manor of T. where a Heriot was payable upon the Death of every Tenant, became a Bankrupt, and the Commissioners assigned his Copyhold to T. S. it was held per Holt Ch. Justice, that an Heriot shall not be paid upon the Death of the Assignee, who could have this Estate no longer than the Copyholder lived; but it shall be paid by the Copyholder, because it was originally to be paid upon his Death, and therefore cannot be altered by any A& done by the Copyholder himself. 3 Salk. 181. in Smartle and Penhallow's Case.

Litt. Rep. 33, 34,

15. A Lease was made to T. S. rendring Rent, and also the best Beast, or 5 l. for an Heriot; the Question was, Whether the Lessor could distrain for an Heriot before he had made his Election which to have; the better Opinion was, that he might.

### Domage.

### (A)

I. In the original Grants of Lands and Tenements in Fee-simple, the chief Lord of the Fee did not only bind, his Tenants to do and perform certain Services, but also obliged them by a promisory Oath to be true and loyal to him, as their Lord and Benefactor.

2. The Form of this Submission of the Tenants to their Lord was after this Manner, (viz.) The Tenants to their Lord was after this Manner, (viz.) The Tenants the Hands of his Lord, spake these Words: † 1 because sinas come your Man from this Day forth for Life and Memutrasque pober, and for worldly Honour, and shall owe you man nere inter Faith for the Land I hold of you, saving the Faith manus utrasform unto the Sovereign Lord my King, and to my other que Domini Lords.

sui, per quod significatur ex parte Domini protectio, & defensio, & warrantia, & ex parte Tenentis reverentia. † 17 Ed. 2. Stat. 2.

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3. In this Manner the chief Lord of the Fee to whom Homage was due, took Homage of every Tenant except \* Women, who perform Homage by \* Glanv. Lib. the Men, (their Husbands) which is signified ex vi 9. cap. 1. Termini by the Word Homage, being derived from F. N. B. 157. the Latin Word Homo, and chiefly relates to the Ser- contra. vice in War, which is performed by Men.

4. But this Word, as it relates to Copyholds, fignifies the Fury in a Court-Baron of the Lord of a Manor, because it consists of such Men which usually

owe Homage to the Lord of the Fee.

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5. Littleton, in Treating of Homage Ancestrel tells us, that fuch Homage is where the Tenant and his Ancestors whose Heir he is, have held the same Lands of the same Lord and his Ancestors, whose Heir the Lord is, Time out of Memory of Man, by Homage, and have done them Homage, which feeins to be a strange and unusual Tenure, and scarce possible to continue between the same Lord and Tenant, and their Ancestors, and of the same Lands, and this Time out of Mind: And therefore my Lord Coke was of Opinion, that there was no Land in England held by Homage Ancestrel, because of this double Prescription, both in the Lord and his Ancestors, and the Tenant and his Ancestors: Yet Mr. Blunt fays, he hath been credibly informed, that one West a Tenant of the Manor of Whitney in Herefordshire; can plainly prescribe to hold his Lands of Tho. Whitney Eig; the Lord thereof, by Homage Anceltrel.

All the old Writers upon this Subject tell us, Bracton, fo. that there is tanta & talis connexio per homagium inter 78. Glan. lib. Dominum & Tenentem, quod tantum debet Dominus 9. cap. 4. Tenenti quantum Tenens debet Domino præter solam Re- Britt. fo. verentiam; and therefore in the Manner of doing 170. 4. Homage as before-mentioned, (viz.) the Tenant putting both his Hands between the Hands of his Lord, fignified on his Part that Reverence which he owed to the Lord; and on the Part of the Lord it figuified Protection and Warranty, (i. e.) to defend and protect the Tenant in his Right to the Land which was granted to him by the Lord, or to yield him other Land in Value, if he should be evicted by any Demandant claiming the fame. M 3

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\* Tit. Ho-

My Lord Coke in his Comment upon \* Littleton tells us, that there is an express Warranty, and a Warranty in Law, and that in the Case of Homage Ancestrel, there is a special Warranty in Law; for in such old and continued Inheritances both Parties have more Privileges, and are more favoured in Law, than in Inheritances lately acquired; therefore in Homage Ancestrel, the Lands which the Lord had at the Time of the original Grant to the Tenant (if he be evicted) shall be liable to make him Recompence in Value, whether he hath them by Descent or Purchase; but in Case of an express Warranty, the Heir shall be charged but only for such Lands as he hath by Descent from his Ancestor who created the Warranty.

But this being antiquated Law, and in no wife relating to Copyholds, &c. I shall mention no more of it, but proceed to what the Homage may

enquire into and present:

f. Alienation of Copyholds by Deed, or fraudulently to defeat the Lord.

Bailiff neglecting his Office.

By-Laws, or Orders, not observed. Chasing Cattle into the Manor.

Common furcharged, or putting in Cattle not commonable.

Concealed Lands.

Court-Rolls with-held.

Customs or Services withdrawn.

Death of Tenant fince the last Court, and who is next Heir.

Enclosures of Common.

Encroachments on the Lord's Lands.

Escheats.

Fishing in the Manor without License.

Forfeitures.

Hunting and Hawking without License.

Leasing for more than a Year.

License, Lands used without License.

Mortmain.

Pound-breach.

Removing Meer-Stones and Land-Banks.

Rentals with-held.

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Repairs, Defect thereof.

Surrenders fince the last Court, and not pre-

fented.

Suit and Service to Court, and to present the Names of Defaulters.

Trees cut down without License.

Trespasses of any Kind.

Waste by Tenant for Life, &c.

busband and Wife Coppholders. See Surrender. (A) 46.

(A)

Tenant cannot take a Surrender out of Court A of a Feme Covert, because she is secretly to be examined by the Steward, whether the doth it willingly, and without Compulsion by her Hus-

band. 1. In Trespass the Desendant justified, setting forth that T. S. was Lord of the Manor of H. where the Custom was, that if a Man married a Copyholder, and had Issue by her, and survived her, that he shall be Tenant by the Curtefy; then he pleaded that he married E. G. to whom a Copyhold Tenement descended during the Coverture; and that he had Issue by her born alive, and that she is since dead, and fo he hath a Right to the Copyhold as \* Te- \* See pl. 12. nant by the Curtefy; and upon a Demurrer to this Plea it was adjudged for the Plaintiff, and against the Husband; for admitting this Custom to be good, yet the Husband could not by Virtue thereof be Tenant by the Curtesy, because his Wife was not a Copyhold Tenant of that Manor at the Time of her Marriage; for the Copyhold Estate descended to ber afterward, and during her Coverture. I Leon. 209. Sir John Savage's Cafe.

Palm. 385. S. C. Cro. Car. 7. S. C. 2 Roll. Rep. 344, 361, 372. S. C. 2. In a special Verdict in Ejestment the Case was, that the Husband being seised of a Copyhold in the Right of his Wise, made a Lease for Tears not warranted by the Custom of the Manor; and in this Case this Difference was taken, (viz.) that where a Feme Sole is a Copyholder, and afterwards marries, and her Husband makes such a Lease, 'tis a Forseiture, because it was her Folly to marry a Man who would forseit his Estate; but where a Copyhold descends, or is granted to a Feme Covert after her Marriage, and then her Husband makes such a Lease, 'tis no Forseiture. Godb. 345. Severn versus Smith.

3. A Feme Sole was a Copyholder for Life; afterwards she married, and the Reversion of this Copyhold was granted to A. B. C. cum accideria, after the Death, Surrender, or Forseiture of the \* See pl. 11. Copyholder for Life, her \* Husband surrendered to A. who was the first in Reversion, who was admitted for Life, then B. died: Adjudged that C. should not be admitted, because after the Death of the Husband, who made this Surrender, (having no Right but the Right of his Wife) she shall have her Copyhold again; and whilst he lives the Lord of the Manor shall have it as Occupant.

Dyer 264.

Moor 596. S. C. 2 Cro. 105. S. C.

\* See postea Infant 1. Right versus Footman, in the Case of an Infant.

4. The Husband was seised of a Copyhold of Inheritance in Right of his Wife, and he, without his Wife joining with him, made a Surrender of the said Copyhold to T.S. and his Heirs, who was admitted; then the Husband died, and his Wise not long after died, and her Heir entered before he was admitted; and adjudged lawful; for this Surrender of the Husband, who had nothing but in Right of his Wise, was no Discontinuance to her, so as to put her Heir to his \* Plaint, in Nature of a Sur cui in Vita at Common Law. Poph. 39. Bullock versus Dibley.

5. Copyholder of Inheritance surrendered to the Lord, to the Intent that he should regrant the same to the Copyholder for his Life, Remainder to his Wife, until his Son should come to his full Age, and after that Term expired, then to his said Son in Tail; the Surrenderor died, his Son being then

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about five Years old, who died foon after his Father; and then the Lord granted this Copyhold to the Widow until her Son should have come to his full Age, if he had lived, &c. the Widow married again, and died intestate; W. R. administred to her, and entered upon the Husband, who was in Possession of the Lands: Adjudged that his Entry was not lawful, because the Interest which his Wife had, was a Term for Years of the Copyhold, which by her Death was lawfully vested in the Husband, it there was not a Custom of the Manor which made it otherwife. Dyer 251. Hanchet's Cafe.

6. In the third Resolution in Bunting's Case, my Heir. (A) 2. Lord Coke tells us, that the Husband may furrender S. C. a Copyhold to the Use of his Wife, because such Surrender is not immediately to her, but by a lecond Means, (viz.) to the Lord of the Manor to her Use, and by his Admittance. 4 Rep. 29, in

Bunting's Cafe.

7. But the Wife cannot give her Copyhold Lands Customs. (A) to her Husband; therefore where the Custom of a pl. 22. S. C. Manor was alledged to be, that a Wife might give (D) pl. 14. her Copyhold Lands to her Husband, this was ad- S. C. judged to be an unreasonable Custom; because the Wife being always Jub potestate Viri, it shall be intended, that her Lands were not voluntarily given to him, but by Compulsion; therefore such a Custom could never have a reasonable Commencement. Godb. 14, 15. Skipwith versus Sheffeild.

8. Where the Husband was feised of a Copyhold \* Estate in Right of his Wife, and committed \* This must Walte and died; this is a Forfeiture, and shall be understood bind her after his Death; this is the second Resolu- of an Estate for Life, and

tion in the 4th Rep. Clifton versus Molineux.

not of a Cotyold of Inheritance. 2 Roll. Rep. 272. Palm. 384. Cro. Car. 7. Cro. Eliz. 149.

9. The Lord of a Manor gave Authority to Two of his Copyhold Tenants to make cultomary Grants and Estates of their Lands for Payment of their Debts, and died; afterwards those two Perlons held a Court in their own Names, and granted Copies in Reversion according to the Custom of the

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See pl. 13.

S. C.

the Manor; the Widow of the Lord recovered a third Part of that Manor on a Writ of Dower; and one of the Copyhold Estates, so granted as aforesaid, was affigned to her by the Sheriff of the County; and it was held good, for the might avoid fuch Grants made by those Persons; and yet sometime after it \* 4 Rep. 24. was adjudged, that where \* Copyholds for Live were held of a Manor, and the Lord married, and then one of the Copyholders died, and the Lord granted the same Lands again to another for Life, and then the Lord died, that his Widow should not a. void this Grant in a Writ of Dower; for though the Grant was made after the Marriage, and by Confe. quence after her Title of Dower accrued, yet the Custom of the Manor upon which that Grant was

Surrender.(A) 42. S. C.

founded was long before. Dyer 251. 10. A Copyholder of Inheritance made a Surrender to the Use of his Will, and then devised his Lands to his Wife for Life, and that she should sell the same for Payment of his Debts, and died; then the Widow made a Surrender upon Condition to pay so much Money, &c. Adjudged this was a good Cro. Eliz. 68. Bright versus Hubbard. Sale.

11. The Husband being feised of a Manor in the Right of his Wife, made a Leafe for Years of a Copyhold Land, and died: Adjudged, that this Leafe shall not destroy the Custom to the Wife, but that after the Death of her Husband she may grant it by Copy, as before the married. Cro. Eliz. 459. Co.

ningsby versus Rastall.

12. It was agreed for Law, that the Husband should not be † Tenant by the Curtefy of a Copyhold Estate, without a special Custom in the Manor for

that Purpole. 4 Rep. 22. Rivett's Case.

See pl. 9. S. P.

See pl. I.

13. Adjudged, that where a Lord of a Manor married, and afterwards a Copyholder for Lite died, and then the Lord granted that very Copyhold to another for Life, and died; his Widow in Dower shall not avoid such Grant; for though it was granted after her Title of Dower, yet the Custom, by which that Grant was established, was before. 4 Rep. 24.

1 Vern. 170. 14. A Copyhold was mortgaged in Fee to a Wo Turner ver. man whilft fole; the afterwards married, and died Crane. leaving third

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leaving Issue, who was admitted, and then he died; then the Husband, as Administrator to his Wife, claimed the Copyhold as being mortgaged, and Part of the personal Estate of his Wife; and the Question being between him and the Heir at Law, it was infifted for the Heir, that here was no Covenant to pay the Money, which alone gives the Administrator a Title; to which it was answered, that there could be no such Covenant in a Surrender of a Copyhold, and that it would be inconvenient to have one Law as to Mortgages of Freeholds, and another Law as to Mortgages of Copyholds: No Decree was made.

# Infants Coppholders.

See Acceptance. (B) 2. Pleadings. (A) 1, 2. der. (A) 16.

### (A)

Copyholder of Inheritance having Issue two Sons, surrendered his Lands to the Use of his eldest Son for Life, Remainder to the Use of his youngest Son and Heirs; and afterwards both his faid Sons being Infants, furrendered the faid Lands to the Use of T. S. and his Heirs, who was admitted; the eldest Son died without Issue, the youngest died leaving Issue, who was admitted and entered upon T. S. the Surrendree; and adjudged lawful, because the Surrender made by his Father during his Infancy was no Discontinuance to his Estate, so as to put his Son and Heir to \* a \* See Bullock Plaint in the Nature of a Dum fuit infra atatem. I & Dibley. Leon. 95. Right versus Footman.

2. The like Point was adjudged in Gooles's Case, (viz.) An Infant furrendered his Copyhold, and afterwards entered at full Age; and his Entry was adjudged lawful, tho' the Surrendree was admitted, because the Surrender by the Infant was no Discon-

linuance. Moor 597. Gooles verlus Grane.

S. P.

3. An

Godb. 364. W. Jones 157. S. C. Antea Acceptance. (B) 2. S. C.

3. An Infant Copyholder of Inheritance made a Lease for Years of his Copyhold not warranted by the Custom, rendring Rent, &c. and afterwards at his full Age he accepted the Rent of his Lessee: Adjudged, that this Lease made by an Infant was no Disseis no the Lord, and that by Acceptance of the Rent in Manner as aforesaid, it was good against the Infant, now he was of full Age. Latch 199. Assistance of the Rent in Manner as aforesaid, it was good against the Infant, now he was of full Age. Latch 199.

Noy 41.

An Infant granted a Copyhold, and it was held good, because the Copyholder is in by Custom.

4. The Custom of a Manor was, that Copyholds should descend to the youngest Son; the Father died, his youngest Son being at that Time about two Years old, and about thirty Years afterwards he entered on his Copyhold, and made a Leafe to T. S. who being turned out of Possession brought an Ejectment, his Lessor being not yet admitted or presented to be the Heir: It was objected, that after fo long a Time he was disabled to make any Lease: But adjudged, that he being so very young when his Father died, and no Court being kept for several Years after he came to full Age, that shall be an Excuse for his Negligence. But an Infant is not bound at any Time, during his Infancy, to appear at Court, and pray to be admitted, nor after his full Age, till the Death of his Ancestor is prefented, and Proclamation made for him to come in. I Leon. 100. Rumney versus Eves.

2 Leon. Cafe 294. Cro. Eliz.

3 Mod. 221. S. C. Lurw. 765. S. C. 5. A Committee of an Infant was evicted: Adjudged, that he might bring an Ejectment ex custo-

dia. 1 Leon. 328. Cole versus Wallis.

6. In a special Verdict in Ejectment the Case was, A Surrender was made out of Court, &c. which was presented at the next Court, but the Surrendree died before he was admitted, leaving Issue his Son and Heir, an Infant; and the Custom of the Manor was found, that if after a Surrender is made and presented, and the Person who hath a Right to be admitted doth not come after three Proclamations made at three several Courts to be admitted, then the Bailiss, by the Command of the Steward, may seife the Copyhold Tenements to the Use of the Lord: And the Question was, Whether an Infant during

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during his Infancy, might be compelled to be admitted to a Copyhold Estate which he hath by Descent; and Holt Chief Justice held that he might, because the Estate continued in the Surrenderor, till the Admittance of the Surrendree, and in this Case the Infant hath no Right till he is admitted; therefore is abfurd to fay, that Infancy shall protect a Right when there is no Manner of Right to be protected; he admitted that Infancy might delay a Remedy to recover a Right, but never was allowed to deltroy a Right, which would certainly be done, if Infancy was a Privilege which exempted the Infant from being admitted; because 'tis plain, that the Lord hath a Right to a Fine upon the Admittance of a Copyholder; and if this Infant should die before he comes of full Age to be admitted, then the Lord would lose that Fine; therefore he ought to be admitted during his Infancy, or to forfeit his Estate; but the other three Judges were of Opinion, that the Infant was privileged by his Infancy. I Salk. 326. King verius Dilleston.

# Jointenants of Copyholds.

See Surrender. (A) 44.

#### (A)

TWO Jointenants of a Copyhold of Inhe- 1 Inft. 59. b. ritance, one of them furrendered to the Use of his Will, and died; the Person to whom he devised it was admitted: Adjudged, that this Surrender and Admittance was a Severance of the Jointure, and by Consequence shall bind the Survivor. 2 Cro. 100. Porter versus Porter.

2. Two Jointenants of a Manor, one of them granted a Copyhold to T. S. Adjudged that the Grant was void, because he was not Dominus protempore, I Leon. Case 217.

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## Leales made by Coppholders, and

Winch 3.

3. A Jointenant of a Copyhold released to his Companion: Adjudged this was good without a Surrender and Admittance.

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# Leales made by Coppholders, and of actions brought by them.

### (A)

2 Brown. 40. 1. S. C.

A Lord of a Manor, who hath no better an Estate in it than at Will, cannot give License to a Copyholder to make a Lease for Years, but he may grant a Copyhold for Life according to the Custom of the Manor; so where the Lord of a Manor hath an Estate in it for Life, and he give License to a Copyholder to make a Lease for Years, such I ease shall determine with the Life of the Lord

of the Manor. I Roll. Ab. 511. K. J.

2. A Copyholder furrendered to the Use of his Will, and afterwards devised his Lands to his Wise for Life, Remainder to his Son in Tail, &c. The Husband and Wise died, and a Stranger entered by Intrusion, and made three Feossments to three several Persons; he in Remainder entered upon the Feosses in the Name, and for all the Lands devised to him, and made a Lease of the Whole to try the Title: Adjudged that both his Entry, and the Lease were good, the Lands lying all in one County. 1 Leon. 35. Troublefield versus Troublefield.

3. Lease of a Court-Baron to two Copyholders, for Two hundred Years, who kept Courts, and a Copyholder furrender his Estate to the Use of T. S. and his Heirs, who got a License in Court to make a Lease of his Lands for twenty-one Years, to commence from Michaelmas last past before the Date of the License; and afterwards this Copyholder made a Lease to the Plaintiff for twenty one Years, to commence at Christmas next ensuing the License; and

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in an Ejectment brought it was adjudged, that this Leafe was not warranted by that License. Cro. Eliz. 394. Juckson versus Neale.

4. The Lord of a Manor licensed a Copyholder for 2 Cro. 436. Life, to lease for five Years, if he should so long live; Poph. 105. and he made a Lease for five Years generally, with- S. C.

out faying, if he should so long live: Adjudged this was a good Pursuance of his License, because he having only an Estate for Life, it must determine by his Death; but it had been otherwise if such License had been granted to a Copyholder of Inheritance.

5. A Copyholder having a License to make a Leafe for so many Years, did make a Leafe accordingly, and pursuant to his License: Adjudged that this Lease shall be Affets in the Hands of his Executor; and tis very clear it would be fo, if the Lease had been for one Year, because such Lease is warranted by the Common Law, and not by Cu-

ftom. Poph. 188. 6. Adjudged that where a Lord of a Manor made a Leafe for Two thousand Years to W. R. of all the Lands which he had granted by Copy, that in such Case the Lessee may keep Courts for Copyholders, and so is \* Melwich's Case; and there \* 4 Rep. 26. is a Difference where there are several Copyholders, and so many which are sufficient to support the Custom, and where there is but one Copyholder,

as in † Murrell's Case, in which the Lord did not † 4 Rep. 24. tacitly grant any Customary Court. 4 Rep. Neal's Cale 26.

7. A Lease for Years was made both of Freehold Cro. El. 851. and Copyhold Lands referving one entire Rent; West versus then the Lessor surrendered the Reversion of the Lassells. S. P. Copyhold to W. R. in Fee; and afterwards granted and 771. the Reversion of the Freehold to the same W. R. Ewers versus and his Heirs, to whom the Leffee for Years attorn- Males. S. P. ed; and in an Action of Debt brought against him for the entire Rent, it was infifted for him, that the Rent was iffuing out of the Freehold only; or admitting it to iffue out of both, then the Plaintiff ought to have brought two Actions, because he had the Reversion of the Freehold and Copyhold by different Conveyances; but adjudged that the Lease of the Copyhold being made by the License of the Lord

Lord with an entire Reservation of the Rent, it shall iffue out of both; for its in Recompence of the Profits the Leffee is to take out of both; and therefore one Action is good for the whole Rent.

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Cro. Eliz. 622. Collins vertus Harding.

8. T. S. a Copyhold Tenant of the Manor of H. had License from the Lord to make a Lease of his Copyhold Lands for twenty-one Years, and he made a Lease thereof for three Years; and no more; and afterwards the Leffee enter'd by Virtue of this Lease, but being turned out of Possession brought an Ejectment; and adjudged that this was a good Leafe for \* three Years, and that the Ejectment was 569. Speake's well brought. Cro. Eliz. 535. Goodwin versus Long. burlt.

Cafe. S. P. 1 Inst. 60. a.

\* See Moor

9. My Lord Coke, in his Comment on Littleton; tells us, that Copyholders shall neither implead or be impleaded for their Tenements by Writ, but by a Plaint entered in the Court-Baron; and that if up. on fuch Plaint an erroneous Judgment is given, no Writ of False Judgment will lie in Respect of the Baseness of the Estate; it being in the Eye of the Law, but an Estate at Will; but his Remedy is by Petition to the Lord in Nature of a Writ of Falle Judgment, and therein to affign Errors.

10. And yet, in the first Resolution in Melwich's Case, he tells us, that a Lessee of a Copyholder for a Year shall maintain an Ejectment; because his Term for one Year being warranted by the general Custom of the Realm, 'tis reasonable that he should have a more speedy Remedy by Ejectment to recover the Possession. 4 Rep. 26. In Melwich and La-

ter's Cafe.

11. But if he brings an Ejectment, he must declare upon the Custom, upon the Lease, and upon the Ejedtment; otherwise it will not lie. Moor 679. Gre-

gory versus Harrison.

12. The Custom of a Manor was, that where a Copyholder died feised of Copyhold Lands, his Wife thould have her Widow's Estate; the Husband made a Lease with License, Oc. reserving an yearly Rent to himself and to his Wife, during their Lives, and afterwards to his Heirs, &c. Adjudged that though the Wife was no Party to this Leafe, yet , it

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after the Death of her Husband she is entitled to the Rent, and though it was referved during their Lives, without faying, or the Life of either of them; it shall continue to be paid during the Life of the Survivor, because the Reversion will attract the Rent to it. I Vent. 163. Hill versus Hill, cited in Went. 163. In the Case of Sacheverel versus Fro-

13. Lease for Years made by a Copyholder ren- 1 Lev. 40. dring Rent, afterwards the Leffor surrendered the S. C. Reversion to T. S. who distrained for the Rent in Arrear, and in Replevin brought, he avowed the Taking, &c. for the faid Rent; but upon a Demurrer to the Avowry, it was objected, that it was ill; because the Defendant did not set forth that the Lessee attorned, or that he had Notice of the Surrender; but the Defendant had Judgment, because the Surrender being it felf a notorious Act, there was no Occasion of an Attornment or Notice. Raym. 18. Black versus Mole.

14. The Father being seised in Fee of a Manor, 3 Mod. 244, ce. fettled it on the Marriage of his Son to the 378. S. C. Use of himself for Life, Remainder in Tail to his Manors. (A) Son with a Power to make Leases for one, two, or three 26. S. C. Lives, or for thirty Years, so as such Lease was not of the Demesne Lands; and afterwards he made a Lease of a Copyhold for thirty Years; and in a special Verdict in Ejectment, this was adjudged a void Leafe, because it was made of Copyhold Lands; for in Truth Copyholds are Parcel of the Demelnes, for by a Grant of the Demesnes the Copyholds will pass; and by Confequence where the Demelnes are excepted, the Copyholds must be so too; and the rather in this Cale, because this Power is excepted out of the Inheritance; and the Tenant for Life, by making fuch Leases, might destroy all the Copyholds, which is unreasonable. 2 Salk. 537. Winter versus Loveday.

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Where, and when to be kept. Page 179. Of Constables chosen in Leets. 181.

See Amerciament. (C) 6, 7.

Of Distress in general, & pro certa Leta. (B)
Leets appendant to Manors and Hundreds. (C)
Presentments in Leets. (D)
Fines in Leets for Contempts. (E)
Fines in general. (G)
What is inquirable in Leets, what not. (H)

#### (A)

I. W E are told by that learned Antiquary Sin Henry Spelman, that a Court-Leet is a very ancient Court, que inter Saxones ad Friburgu, &c. pertinebat, the Meaning of which is thus:

2. If. It was an ancient Custom in England, that every Free-born Man, when he was fourteen Year old, thould find Surety for his Truth towards the King and his Subjects, or otherwise to be imprisoned till he found such Surety: Whereupon a certain Company of Neighbours were usually bound for one another to see each Man, for whom they were bound or pledged, to be forth-coming at all Times; or if he was sled, to answer for any Offence he had done; so that when a Crime was committed by any Person, it was immediately enquired to what Pledge he did belong; and then those by whom he was pledged, were to bring him forth within a Month to answer, &c. otherwise they were to make Satisfaction for the Injury he had done.

† 'Tis now 3. This was called in those Days † Frank-pledge, called Visus and the Limits of this Custom were called Decenna, franci plegii. because it usually consisted of Ten Housholds.

4. This Custom is now disused, and there are no other Frank-pledges but Leets, which are called Curia visus franci plegit; and is always stiled by I Brown!. fore the Court-Baron, because 'tis a \* Court of Re-

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cord, and in whose Manor soever it is kept, it is accounted the King's Court, because the Authority thereof is derived from the Crown to Lords of Manors.

5. Tis called Leet from the Saxon Word Lat. which signifies censura, arbitrium, because this Court redressed Wrongs by Way of Judgment against any Person of the Frank-pledge who had done any Wrong or Injury to another, excepting only the Nobility and Prelates who were answerable only for themselves, and their Servants, and punishable in other Places for Offences against the Law; but all other Men were affociated in Decennaries, (i. e.) in a Company of ten Families, who were pledged or bound for one another as aforefaid; and in Remembrance of this ancient Custom, there is a certain Officer almost in every Village in the West Part of England, called a Tithing-man to this Day; and in many other Villages he is called Headborough, which signifies the Chief of the Frank-pledge, as the Friburgh was anciently the Principal Pledge of the ten Families; in other Places he is called Burrough-head and Bursholder, according to the Diversity of Speech; and in Yorkshire Tienmantale.

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6. In a Quo Warranto to know by what Autho-Where, and rity the Detendant held a Court-Leet; he pleaded, when to be that he was seised of such an antient Message in kept.

H. and so prescribed to hold a Leet in that Message; upon a Demurrer to this Plea it was objected, that a Leet could not be appendant to a Message; therefore this Prescription must be void; but it was adjudged good, because it may be reasonably intended this was the capital Message and Seat of the Lord of the Manor, and where Court-Leets had been held Time out of Mind. 2 Brown 217. Delve's Case, and Griffin versus Cooper.

7. Upon a Motion to quash a Presentment at 2 Saund. 290. a Court-Leet where T. S. was fined for resusing S. C. to take upon him the Office of Constable, being Pl. 8. S. C. chosen, &c. it was objected, that the Court was said to be held infra unum mensem santi Mich, (viz.) duodecimo die Novembris, which is above a Month after Michaelmas; and that 'tis absolutely N 2 necessary

necessary to set forth the very Day on which the Court was held, because it may be on a Sunday, and yet within a Month of Michaelmas; and for this Reason the Presentment was quashed. Vent.

107. Dacon's Cafe.

8. The Case last mentioned is reported more sully by the Lord Chief Fustice Saunders, (viz) he tells us, that by Magna Charta, cap. 35. and by the Statute 31 Ed. 3. cap. 15. the Leet must be held within \* But a Man a Month after \* Easter and Michaelmas every Year, and at no other Time, unless by Patent or Prescription; that at a Court-Leet of the Mayor and Commonalty of London, held for their Manor called K. M. 111 Southwark, Dakins was chosen Constable, and refufing to take on him that Office, was fined 22 l this Matter was removed into B. R. by Certiorari, by which it was thus certified, (viz.) Visus franci plegii Majoris, Communitatis, &c. London, Dominorum cause that Sta- manerii pradict' pro manerio. Oc. apud quendam locum, Oc. within a Month after the Feast of St. Michael the Affirmance of Archangel, (Scilicet,) on Tuesday the 12th Day of November; and now the Court was moved to quath this Presentment, because it appears, that the Court-Leet was held a Month after Michaelmas; but on the other Side it was answered, that it appears to be held infra mensem post festum, O'c. which is well enough, and that the Scilicet shall be rejected, because tis contrary to the Matter precedent; but per Curiam, if the Scilicet is rejected, then there would be no Day at all appearing on this Record, on which the Leet was held; for 'tis set forth to be held within a Month after Michaelmas generally; and if so, then it might be held on a Sunday, which is dies non juridicus, so that there is a Necessity to mention a certain and particular Day on which the Leet was held; and for this Reason the Presentment was quashed. 2 Saund. 290. Dakins's

9. All inferior Jurisdictions, and the Power by which they act, ought to be specially set forth, (viz.) Whether it be by Prescription or Grant; and if that is omitted, then Presentments made in those Courts will be quashed. See 2 Cro. 184.

may prescribe to hold a Leet oftner than twice a Year, and at other Days than appointed by Magna Charta, betute is in the the Common Law. 2 Leon. 28, 74, 266. 3 Leon. 78. The King versus Partridge.

10. T.P.

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10. T. P. was chosen Tithing-man at the Court- Of Constables Leet for the Vill of H. in the County of, Ge. and chosen in Leets. was indicted, for that he non prastitit sacrament' be- Pl. 7. fore a Justice of Peace to execute that Office; but If a Court-that he voluntarie & obstinate abstained so to do, &c. Leet do not this Indictment was quashed, because it did not set all a Conforth that he was summoned to appear before a Justice Stable, the Quarterof Peace, nor how, or in what Manner he was chosen; Sessions may. it only being that he was lawfully chosen Tithing- Postea pl. 19. man, Gc. but upon a Motion, a Writ was granted by B. R. directed to him, by which he was commanded forthwith to go before a Justice of the Peace to be sworn. Allen 78. Pigg's Case.

11. A practifing Physician in London was chosen Sid. 413. Constable in the Country, and thereupon his Coun-fel moved the Court of B. R. for a Writ of Privilege, but a Distinction was made between the Privilege of a Physician and a Lawyer; for a Lawyer is intitled to it, by Reason of his Attendance on the Courts at Westminster, but a Physician is a private Profession which may be exercised in a Chamber.

1 Mod. 22. Doctor Pordage's Cafe.

An Attorney of the Court of King's Bench was chosen Tithing man of Taunton, where there was a Custom, that every one shall be a Tithingman or Constable dwelling in such Houses, and the Attorney brought his Writ of Privilege, and it

was allowed. Cro. Car. Prouse's Case.

Resolved, That an Alderman of London who hath Houses and a Seat in the Country, shall not be obliged to serve as a Constable there, by Reason of his Privilege as an Alderman, the same Privilege being allowed by Law to Attornies who attend the Courts in Westminster-Hall. Cro. Car. Abdy Alderman of London's Cafe. Where an Inhabitant retules to serve as Constable, he is not to be committed, but may be indicted and fined; to relolved in Crawley's Cafe. Cro. Car.

12. T. S. being chosen at a Leet Constable for the Hundred of, &c. was presented at the Sessions for retuling to take upon himself that Office; but upon a Motion in B. R. this Presentment was quashed, because it did not mention before whom the Seffions was held; and Justice Twisden was of Opinion,

that the Clerk of the Peace should be fined for returning such a Presentment. 1 Mod. 24. The King versus Vans.

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1 Lev. 233.

13. Sir Walter Vane was chosen Reve to collect the Lord's Rent, having an Estate which he held of the Manor of D and being a Captain of the Guards, he moved B. R. for a Prohibition, for that by Virtue of his Place being a Captain, &c. he is to attend the King's Person; the Question was, Whether he could make a Deputy, for if he could, then the Court would not allow him this Privilege; it was faid in his Behalf, that a Constable might make a Deputy, but the Court was not fatisfied in that Matter: It was admitted, that by Custom the Inhabitants of fuch Houses in such a Vill shall take upon them the Office of a Constable by Turns, is good; and if it happen to be the Turn of a \* Widow, by Reason of her inhabiting one of those Houses, she must hire one to serve the Office; but then the Person so hired is not her Deputy, for he is Constable himself, being actually sworn into the Office; but it was held in the principal Case, that sir Walter Vane might make a Deputy Reeve, and for that Reason his Privilege was denied. Sid. 335. Sir Walter Vane's Case.

\* Prouser's Case, Cro. Car. contra.

Moor 845. S. C. 1 Roll Rep. 274. S. C.

† Cap. 5.

14. Though in the Case last mentioned, the Court was not satisfied, that a Constable might make a Deputy; yet there is an express Authority that he may, where it was held, that he is a ministerial Officer, and therefore where a Warrant is directed to him by a Justice, he may make a Deputy to execute it; and it was adjudged, that such a Deputy shall have the Benefit of the Statute † 7 fac. to have double Costs; but all Returns made by such Deputy, must be in the Name of the Principal himself, (viz.) in the Name of the Constable; but a judicial Officer cannot make a Deputy, because he is to do justice in his own Person. 3 Bulst. 77. Phelpes versus Winchcomb.

15. Upon Complaint made to the Sessions, that one Steevens was at the Court-Leet presented to be a Constable for the Year ensuing; and that the Steward resused to swear him, but nominated another, and swore him into the Office; the Sessions ordered

that Sieevens should serve the Office, and swore him accordingly; and all this Matter being returned by Certiorari into B. R. it was objected, that the Fustices in Seffions had no Power to choose a Constable, but that the Leet was the proper Court for that Purpole; this was admitted by the Court to be true; but that a Constable being a Peace-Officer, is within the general Jurisdiction of the Justices of the Peace, tho they have not an original Authority to choose one; the Order was confirmed. T. Jones 212. The King vertus Steevens.

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16. The Defendant was indicted, for that he being duly cholen Constable in a Corporation according to Custom, refused to take upon him the faid Office, Oc. upon a Demurrer to this Indictment, it was the Opinion of the Court of B. R. that at Common Law all Constables were chosen in the Court-Leet, or at the Sheriff's Tourn, where there is no Leet; that it hath been a great Question, Whether Constables are to be chosen by the Steward, or by the Jury; but a Corporation cannot choose a Constable of common Right; they may do so by Custom, but then they must prescribe to it. 2 Salk. 502. The King verius Bernard.

17. By Custom one was chosen Constable in a Leet, Steward. (A) who refused to take upon himself that Office, but 9. S. C.

went out of Court; and thereupon the Steward let a Fine of 5 l. upon him, for which the Bailiff of the Lord distrained; and in Replevin, my Lord Coke tells us, these Points were resolved; first that every fudge of Record may impose a reasonable Fine on any Man for a Contempt or Disturbance, and that the Steward of a Court-Leet is a Judge of Record; for

that is a Court of Record.

It was resolved, that this Fine need not be affeered, because the Statute of Magna Charta mentions Amerciaments, and not Fines, the one being imposed by the Fury, and the other by the Court; and therefore the Judgment in Amerciament is quod fit in milericordia generally, for which Reason it must be affeered; and this Statute is, that a Nobleman thall be amerced by his Peers, which is now quite out of Ule, because 'tis reduced by a certain Sum, (viz.) a Duke to 101. and the other Peers to 51. but an N 4

Amerciament of an Officer of the Court shall be affeered by the Court, and a Distress may be taken for an Amerciament, and this without any Custom so to do; and by Consequence it may be taken for a Fine, which is more than an Amerciament. 8 Rep.

38. Griefley's Cafe.

18. The Port-Reeve of Evill in Somersetshire, was usually chosen to continue in his Office for one Year, and after the Expiration thereof, a new Port-Reeve was to be chose and sworn at the Leet by the Steward of Sir Edward Philips, Lord of the said Manor, who by Reason of some Displeasure resulted to hold the Leet; and thereupon the Court of B. R. upon a Motion, made a Rule commanding that the Oath should be tendered to the new Port-Reeve who was chosen. 2 Roll. Rep. 82.

5 Mod. 124. S. C.

19. There being a Court Leet within the Manor of Shewstone, and the Jury having Time out of Mind, choice one of the Tenants and Inhabitants of the faid Manor to be Conftable, who, when chosen, is by Custom to serve that Office for the ensuing Year, or to forfeit a reasonable Sum to be imposed on him by the Jury; and T. S. being chosen Constable as aforesaid, was ordered to take upon himfelf that Office, under the Penalty of 40 s. of which \* notitiam habuit, but neglected; all which was prefented at the next Court, fo that he had forfeited 40 s. for which the Bailiff of the Lord of the Manor distrained, and in Replevin pleaded all this Matter, to which Plea the Plaintiff T. S. demurred; and it was adjudged, that of Common Right the Constable is to be chosen at the Leet by the fury, then and there fworn; and if the Person so chosen is present in Court, and resuseth to take upon him the Office, then for such Refusal, the Steward may fet a Fine on him; and if he is not present in Court, then the Jury may present his Refusal at the next Court Leet; and in fuch Case he is to be amerced; but a Distress cannot be taken for such Amerciament without a Custom so to do; besides the Form of this Plea is not good; for to alledge, that notitiam habuit of the Order to take upon him the Office, is not sufficient; he should have alledged that the Person thus chosen was summoned to appear before a Justice

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20. It hath been adjudged, that a Village and a Constable are Correlatives, that an Hamlet hath no Constable, and that the Sessions may appoint one, where the Lect neglects or refuses so to do; that the Statute 13 6 14 Car. 2. cap. 12. gives that Court Authority in particular Cases, but the Court of King's Bench will intend they have a . sufficient Authority in general to appoint Constables; and as concerning the Power of a Constable, if a Warrant is directed to him by Name, he may go out of his Precinct to execute it, and shall be justified by the Warrant; but if 'tis directed to the Confables in general, then he cannot go out of his Liberty to execute it. I Salk. 175. The Case of Chorley Vill.

21. In Replevin, &c. the Defendant avowed, Raym. 204.

for that he was seised of the Manor of H. to which there is a Court-Leet belonging; and that by Custom Time out of Mind, the Inhabitants and Resiants of it have used to send a Constable to the laid Leet, to be sworn into that Office; and that he the Defendant by T. S. his Steward at H. aforefaid, held a Court-Leet, and gave Notice thereof at H. aforesaid; and that the Inhabitants of that Vill did not fend any Person to be Constable, Jc. whereupon the faid T. S. his Steward fet a Fine of 39 s. on the Inhabitants, &c. which not being paid, he distrained for the same; the Plaintiff traveried the Custom, and the Desendant took Issue upon the Traverse, and had a Verdict; it was moved in Arrest of Judgment, that this Avowry was ill, because the Defendant did not set forth a Cultom to distrain for this Fine; 'tis true of Common Right, a Distress may be taken for a Fine in a Court. Leet; but then it must be imposed for such Offences as are incident to the Jurisdiction of those Courts, as for Contempts, &c. for in other Cales a Distress is not incident to a Fine, neither can it be implied in this Case by alledging a Custom to iinpole it, &c. and therefore it was adjudged, that where a Duty is raised by a Custom, a \* Distress \* See (B)pl. 1.

for fuch Duty must be maintained by the like Custom. I Vent. 105. Peirson versus Ridge.

\* This is a noble Sort of Signiory, on which several inferior Manors depend, Spelm. tells us 'tis composed of several Manors, & plurima feoda militaria, pluri dictus est o lim Beneficium fen feodum re gale, tentufq; femper a Rege in Capite.

22. A By-Law was made in a Court-Leet held for the King in his \* Honour in Grafton, (made an Honour by the Statute 37 H. 8. cap. 18.) that every Person within that Leet who should receive an Inmate in a House there, without giving Se. curity to the Overseers of the Poor, &c. should pay 5 1. per Month, and that T. S. had received an Inmate into his House, Gc. without giving any Security as aforefaid, &c. and that he was fined 20 1. which Fine was estreated into the Exchequer. and Process issued upon it; and now upon a Mocomplectitur tion in the Court of Exchequer, Hale Chief Ba. ron was of Opinion, that it was hard this Fine should be estreated before the usual Remedy had ma Regalia, been taken, (viz.) to distrain for it, because by the Estreat, the Lands will be extended when probably the Party might have something to plead by Way of Discharge, if a Distress had been taken; but now he will be deprived by this Means; for he might have pleaded, that he did not dwell within the Jurisdiction of the Leet, or that he did not receive any Inmate into his House; this being the Opinion of the Chief Baron, the Offcers of the Court told him, that it was usual to estreat Fines which belonged to the King, but not otherwise; so the Party was ordered to plead. Hardres 471.

1 Eliz. c. 17.

The Steward of Leets must give the Ad I Eliz. in Charge to the Jury, which Act was made to prevent the Deltroying the Fry of Fish, and taking Salmon out of Season; and in Default of giving it in Charge, he forfeits 40 s. to be divided between the Crown and the Profecutor, to be recovered at the Sessions by a Jury.

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(B)

I. A Distress is incident to a Court-Leet of Com-Distress in mon Right, but in a Court-Baron, the general, and Lord must alledge a Prescription to distrain; and in procerta this Case it was held, that the King might create Lota.

a Court-Leet, where there was none before. I Brownl.

2. But for some Things the Lord of a Leet can- 3 Leon. 98.

not distrain without prescribing so to do; and this S. C.

my Lord Coke tells us, was the third Resolution in

Godfrey's Case, where it was resolved, that the Lord cannot distrain pro certa Leta without a Prescription, because 'tis against Common Right, and only for his Benefit, but he may distrain for a Fine or an Americament in a Leet, because that Court cannot imprison a Man till the Fine is paid. 11 Rep. 42. In

Godfrey's Cafe.

3. In Replevin, G'c. the Defendant avowed the Taking, &c. for that he was seised of the Hundred of H. and that he and all those, whose Estate he had in the faid Hundred, had used to hold a Court-Leet there twice every Year: And that at every Leet fo held as aforesaid, the Inhabitants, Gc. had used to pay 16 d. pro certa Leta, and that Diffresles had been usually taken for the same upon Resusal to pay it; and upon a Demurrer to this Plea it was objected, that it was ill, because the Defendant in making a Title to this Leet by Prescription, conveyed the Hundred to himself by a Que Estate, (viz.) that he and all those, whose Estate he had in the Hundred, &c. which is not good without fetting forth a Deed; but it was held, that though this might have been a material Objection, if the Hundred it felf had been in Question; yet 'tis not so where a Thing is claimed out of the Hundred, as the Leet was in this Case, which was derived out of the Hundred; for there 'tis sufficient to alledge that he was seised of the Hundred without thewing any other Title. 2 Leon. 74. Lawfon verlus Hare.

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1 Roll. Rep. 73 S. C. by the Name of Bullen versus Godfrey.

4. We are told by my Lord Coke in Bullen's Case, that the Lord of the Leet may have a certain Sum pro certa Leta; for it shall be intended, that at first it was granted to him when he purchased the Leet for the Ease of his Tenants, that they might have no Occasion to go to the Sherist's Tourn to do their Services there; but for the Time to come such Services may be done at the Leet. 6

Rep. 77. Bullen's Cafe.

5. The Money thus to be paid, was in some Places called Head-money, and Head pence, in other Places Cert-money, and Common Fine, and as Mr. Blount tells us, it was first granted to the Lords towards their Charge of the Purchase of the Court-Leets, by which Means the Resiants had their Ease in doing their Services nearer home, and not to be compelled to go to the Sheriff's Tourn; for in former Days all Persons were bound twice a Year to attend in those Tourns, where they were informed of Things relating to the Publick Peace, and to do Suit and Service there, which was called Royal Service, because the Sheriff's Tourn was the King's Leet; but after Leets were granted to several Lords of Manors throughout the Kingdom, their Tenants were no longer obliged to attend those Tourns, but to do their Services at those Leets, for which they were originally to pay a certain Sum pro certa Leta.

### (C)

Appendant to Manors and Hundreds. 1. A Leet may be appendant to a Manor, or to a Hundred, of which the Cases following are several Instances.

2. In Three Coparceners were feised of a Manor in Fee, to which a Leet was appendant, afterwards the King purchased two Parts of the Manor with the Appurtenances: Adjudged that the Leet is still appendant to the third Part of the said Manor. Bendl. 41.

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3. In Replevin the Defendant made Conusance as Leet. (G) 22. Bailiff to T. S. fetting forth, that he had a Leet S. C. within his Manor of H. &c. and that at fuch a Court-Leet there held on fuch a Day, &c. the Plaintiff was amerced for putting his Geefe on the Common, for which Amerciament the Defendant difrained, and so justified the Taking, &c. and upon a Demurrer to this Conusance the Plaintiff had Judgment; because this was not an Article inquitable in a Court-Leet, or punishable there. Cro. Eliz. 448. Wormleighton versus Burton.

4. In Replevin for Taking his Oxen, the Defendant made Conusance as Bailiff of the Lord of the Leet, and that at such a Court, Gc. the Plaintiff was amerced for not scouring a Ditch in a Highway, for which Amerciament he (the Defendant) distrained, &c. and upon a Demurrer to this Plea it was objected that it was ill, because by the Statute 18 Eliz. cap. 9. the Forfeitures for not Repairing the Highways are given to the Surveyors, O'c. but adjudged, that Offenders of this Nature may be punished in the Leet, and likewise by the Statute for several Causes. Raym. 250. Stephens versus

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5. In Replevin, &c. the Defendant avowed, for that he had a Court-Leet for all the Inhabitants and Resiants within his Manor of H. at which Court they were to appear, &c. and that the Plaintiff being an Inhabitant, &c. was fummoned to appear at the Leet there held on a certain Day; and for not appearing, he was amerced, for which the Defendant distrained, and so avowed the Taking, Ge. the Plaintiff replied, that the Place where his Habitation was at the Time when his Cattle were distrained, and when the faid Court was held, was Parcel of the Monastery of H. and Lands held in Frankalmoigne, and discharged of all secular Services; then he fets forth the Statute of \* H. 8. and \* 31 H. 8. the Grant of that King to his Ancestors adeo plene, libere & integre as the Abbot held it before, and at the Time of the Diffolution, and so conveyed a Title to himself of the Premisses by Descent, &c. and upon a Demurrer to this Replication, the Court gave Judgment for the Plaintiff, because the

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Abbot was discharged from secular Services ratione ordinis, as all Churchmen, Noblemen and Women were in those Days: 'Tis a Privilege and Immunity which Churchmen had at Common Law, in Respect of their Persons, and long before the Statute of Marlbridge; therefore this Discharge being personal, shall not go to the Grantee of the King, but all of their Persons above twelve Years old must do Suit and Service at these Courts-Leet, which in Truth is a Suit real, or more properly a Suit Royal; because the Leet is the King's Court, though the Lord hath the Profit of it; and the Service there done is the Service to the King. 2 Roll. 56. Dacre versus Nixon.

Appendant to a Hundred.

6. An Hundred was Part of the County, so called because it was composed of a Hundred Families; and in every Hundred there was formerly a Court kept, whereof the Sheriff of the County was Judge, to which Court the Inhabitants of each Hundred were bound to come twice every Year, (viz.) at Easter and Michaelmas; but the People being in those Days very much oppressed by those to whom the Sheriffs had farmed out those Courts, they were for the most Part reduced to the County-Court by the Statute 14 Ed. 3. cap. 9. and fo they continue to this Day, except some sew of those Hundreds which by Privilege have been annexed to the Crown, or granted to some Subject, which still remain in the Nature of a Franchile, and where the Sheriff cannot interpole by his ordinary Authority, except those in the Hundred refuse or neglect to do their Office.

7. In some of those Hundreds thus exempted from the ordinary Jurisdiction of the Sheriff, there is a Court-Leet appendant, of which the Lord is Judge;

as for Inflance:

8. The Abbot of Abingdon was seised of the Hundred of H. in Berkshire, and of a Leet appendant to that Hundred, which he-prescribed to hold once in every Year within one Month after Easter; that there were several Villages in that Hundred, of which the Village of Norcot was one; that after the Dissolution, &c. of that Abbey, King Ed. 6. granted several Lands in the said Village to one Lyong omnes Curias Letas & amerciamenta pramissis in North

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Norcot pertinen' provenien', Oc. and that he should have and enjoy to him and his Heirs, tot, talia or consimilia Curias Letas & amerciamenta, &c. as the Abbot had infra terras pradict, (which must be the Lands in Norcot) and afterwards the King granted the Hundred and Leet to another, which faid Hundred, &c. by feveral mefne Conveyances came down to the now Plaintiff, the Lord Norris, and that Barrett the Defendant claim'd a Title under Lyons, and that he was an Inhabitant in Norcot, and that a Court-Leet was held there on fuch a Day, &c. of which he had Notice, &c. and being fummoned to appear at the faid Court, he made. Default, and was amerced to 40 s. for which an Action of Debs was now brought; and all this Matter appearing on the Pleadings, it was adjudged that Lyons, under whom the Defendant claimed, was not discharged from the general Leet of the Hundred; for by this Grant he had no Title to the particular Leet, which was appendant to it, because the Leet mentioned in his Grant was restrained to the Lands granted; for it was omnes Letas pramissis in Norcot pertinen', but there was no fuch Leet there before the Grant; for the Leet which the Abbot had, and which came to the Crown upon the Diffolution of the Abbey, did not belong to the Lands in Norcot, but to the Hundred of H. 'tis true by the subsequent Words in this Grant, Lyons was to have consimiles Letas as the Abbot had; but if he cannot have the same, he shall never have consimiles, because no Man can have a Leet in the same Place where the King had one before; and as to that Word amerciamenta in Norcot provenien, the Abbot had no Amerciaments particularly arising out of the Lands there, other than as it was Parcel of the Hundred; and in the Grant to Lyons, that Word is particularly restrained to the Lands in Norcot; besides in Propriety of Speech Amerciaments cannot be faid to arise out of Lands; for they arise by Reason of an Offence done, not where the Lands lie, but where the Leet is held. Moor 426. Lord Norris versus Barret.

(D) 1. 74-

#### (D)

Presentments in Leets.

1. TUratores pro Domino Rege, & Domino manerii & Tenentibus, presented the Defendant for build. ing a Glass-house, which they alledged to be ad commune nocumentum, and for that Reason it was qualhed; for though fuch a Presentment in a Leet may be good for the King and the Lord of the Ma. nor, (for that Leets were granted to Lords of Ma. nors as derived out of the Tourn, and as to the Word Tenentibus, that may be allowed to be Surplufage); yet this Presentment was ill for the Reason before. mentioned. 1 Vent. 26.

See the Pleadings in this

2. Presentment at a Court-Leet for enclosing a Road, and building a Cottage ad commune nocumentum of all Case in the Ap- the Inhabitants of the Vill of H. this being remopendix. pl. 29. ved into B. R. by Certiorari, it was objected that it was not good, either upon the Statute, or at Common Law; it was not good upon the Statute 31 Eliz. cap. 7. made against building Cottages, because is not alledged that it was built for Habitation; and the Statute inflicts the Penalty of 10 l. on any Person who builds a Cottage contrary to that Law; belides it ought to conclude contra formam Statuti, O'c. neither is it good at Common Law, because Inclosing the Road, and Building a Cottage on the Waste, is an Injury done to the Lord of the Manor, and not prefentable at a Leet, so as to subject the Offender to an Amerciament, because 'tis not a

\* 'Tis for that \* publick Nusance : Now a Leet cannot amerce for a Reason that a particular Trespass done to the Lord of the Manor, or to any other Person where an Action will lie to Pound-Breach is not recover Damages, but only for a publick Nusance, presentable at which this is not; therefore it was quash'd. I

a Leet, but Saund. 135. The King versus Dickenson.

excessive Toll is inquirable there. 4 Leon. 21. Sanderson's Case, postea (G) pl. 16. S.C.

Raym. 154. 3. Several Persons being presented at a Leet for using Trades, not having been Apprentices to those † 5 Eliz. c.5. Trades for seven Years according to the † Statute; # (viz.) 40 s. the Bailist of Westminster levied several # Sums of per Month. Money

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that that objec olegii Money upon the Persons thus presented; and upon Complaint made to B. R. the Court held that the Statute & Eliz. cap. 5. did not give the Leet any furisdiction in this Matter; it was admitted, that Informations for Offences upon penal Statutes are by the Statute 31 Eliz. cap. 5. to be brought either at the Assizes or Sessions, in the proper Counties where fuch Offences were committed, or at the Leet; but that must be understood for such Offences of which Leets have a proper Cognizance, but Presentments for using Trades contrary to the Statute, must be at the Sessions, or in B. R. Sid. 289. Amy versus Bennet.

4. The Defendant was presented at a Leet for Breaking the Soil, and digging Conyboroughs in the Lord's Waste, which Presentment being removed into B. R. it was objected that a Leet cannot amerce for any Thing done to the Damage of the \* They cannot \*Lord, but that he ought to bring his Action amerce for of Trespass; besides this Presentment concluded common Tresad commune nocumentum, which is falle; and for paties, but onthese Reasons it was quashed. Raym. 160. Ayre's ly for publick

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5. Certiorari to remove a Presentment at a Leet 1 Saund. 135. for a Nusance, it was objected, that a Court-Leet is not of common Right, for it was taken out of the Tourn; therefore in this Presentment it ought to be set forth how, or by what Right the Leet was held; which Objection had often been made in the like Cases, and as often over-ruled. I Salk. 200. The King versus Gilbert.

6. But in every Presentment in a Court-Leet, it ought to appear upon what Day the Court was held.

2 Saund. 291.

7. Presentment at a Court-Leet for erecting a Cottage contrary to the Statute 31 Eliz. cap. 7. without laying four Acres of Land to it, according to the + Statute de terris mensurandis, which being re- † 34 Ed. 1. moved into B. R. by Certiorari, it was objected, first, that it was an Ordinance and no Statute; but that Objection was over-ruled, and the Court held that it was a Statute and no Ordinance; then it was objected that the Caption was Ad curiam visus Franci flegii cum curia Baron', &c. which is ill as to the

Court-Baron; for that Court hath no Authority to take a Presentment of this Nature, and it must be illegal, because 'tis incertain at which Court the Presentment was made; but it was adjudged, that where two Courts have a Jurisdiction to proceed for the same Thing, but in a different Manner, in fuch Case it ought to appear plainly by which of these Courts a Presentment was taken; but in the principal Case there was but one of the Courts which had a proper Jurisdiction and Authority; therefore the Caption must be necessarily taken by that Court which had Jurisdiction to proceed. i Salk. 195. The King versus Everard.

#### (E)

Of Fines for Contempts. Moor 470. S. C. Owen 113. S. C. Steward. (A) 8. S. C. by my Lord Coke, that Court which can fine, and not imbrison. 11 Rcp. 44.

I. IN an Action of a Debt for \* a Fine imposed on the Defendant at a Court-Leet, the Plaintiff fet forth in his Declaration that he had a Let within his Manor of H, to which all his Tenants and Resiants there ought to come, and that at fuch a Court held there on fuch a Day, &c. before T. S. his Steward thereof, he the faid Stew-\* We are told ard told the Defendant that he was Suitor, &c. who replied, (viz.) In saying so thou liest, and for which Words the Steward fet a Fine of 20 s. upon this is the only him, and for which Fine this Action was brought; upon Nil debet pleaded, the Parties were at Issue, and the Plaintiff had a Verdict; and it was moved in Arrest of Judgment, that this was not a Con-I Roll. Rep. tempt for which a Fine ought to be imposed; but 35. Rep. 74 the Court was of another Opinion, and that it was an apparent and infolvent Contempt and Abuse of the Steward as a Judge; and that he himfelf might set the Fine, and that this Action was well brought for it. Cro. Eliz. 582. Lord Lincoln versus Fisher.

2. The Defendant appearing at a Court-Leet, put on his Hat in Contempt of the Court, and being admonished by the Steward, that it was not W

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Leet, d benot well well done, he replied that he did not Value what he (the Steward) could do to him; whereupon he set the Fine of 40 s. on him, for which the Lord of the Leet brought an Action of \* Debt; and ad- \* Tho' the Fine judged that the Action did lie. Raym. 68. Bathurst savours of the versus Cox.

Realty, yet 'tis a certain

Duty, and for that Reason Debt lies. Sid. 58. 2 Mod. 230. 3 Mod. 240. S. P.

3. In Trespass for Breaking his House, and Taking from thence a filver Cup, &c. the Defendant justified for that at a Court-Leet held, &c. before T. S. his Steward, ipso tunc judicialiter sedente, the Plaintiff spoke these Words, (viz.) The House in which you hold the Court, is the House of the Mayor of Sudbury, and that John Skinner who was there present, hath more Right to be there than the Steward, and if he was Mayor of Sudbury, he would not suffer the Court to be held there; for which Words to spoken of the Steward, he set a Fine of 50 s. on the Plaintiff, for which he the Defendant distrained this Cup, &c. The Plaintiff replied, That the House where this Court-Leet was kept, was the Town-Hall in the Borough of Sudbury, and that John Skinner was then Mayor, &c. and that the Plaintiff was then also a Free Burgess of the said Borough, and that he spoke the Words aforesaid quiete & pacifice, &c and upon a Demurrer to this Replication, the Plaintiff had Judgment, the Court being of Opinion that the Steward had no Authority to let a Fine on him for Speaking those Words, and that it was unlawful for him fo to do. T. Jones 229. Berrington versus Brockes.

) 2 (F) 1.

#### (F)

Of Fines in General.

I Roll.

Rep. 73.

1. A Djudged, that where a Jury at a Leet refuse to make a Presentment, the Steward may affess a Fine on them. Dyer 221. The Earl of Arun-

2. Twelve Chief Pledges at a Court-Leet refused to present, according to the Custom of the Manor, that each of them ought to pay a Fine to the Lord pro certa Leta, for which Contempt the Steward of the Court set a Fine of 61. on them, and the Lord distrained one of them for the Fine, who brought a Replevin, and Judgment was given for him; for my Lord Coke tells us in the first Resolution in \* Godfrey's Case, that the Fine was not well affessed, because it ought to be set on each of them, and not

Offence had been joint, yet the Fine should be several; as in Trespass, &c. but where there is an Incertainty both of the Persons, and of the Number of the Persons, many may be find jointly; as for Instance; a Town may be fined for the Escape of a

Felon. 11 Rep. 42, in Godfrey's Cafe.

3. In Replevin, &c. the Defendant justified the Taking as a Distress for a Fine, set on the Plaintist by the Steward of a Lect; for that he (the Plaintist) did not appear at the Court, &c. and to do Sait and Service there; and upon a Demurrer to this Plea the Plaintist had Judgment, because it appear'd that the Fine was set without a Presentment of the Offence; and it was held that the Plaintist should rather have been amerced than fined; because if the Steward should set an \* unreasonable Fine on him, there is no Remedy: but

\* In the first sined; because if the Steward should set an \*unResolution in reasonable Fine on him, there is no Remedy; but
Godfrey's if the Americament is unreasonable, the Law hath
Case, 'tis held provided a Writ for the Remedy, which is
that the Reagrounded on Magna Charta, cap. 14. (viz.) The
sonableness or Writ de moderata misericordia. Cro. Eliz. 241. Hall
Excessiveness versus Talbott.

of a Fine shall be determined by the Judge.

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4. But a Leet-Jury shall not be fined by the Stem- 8 Rep. 34 a. ard for not giving in their Verdict, and therefore a S. P. Fine which was set on them in such Case was quashed upon a Certiorari; it was formerly punishable in the Star-Chamber, and now in B. R. Pasch. 7 Will. B. R. Alcock's Case.

5. The Steward of a Leet may impose a Fine upon one who is chosen Constable, and resules to be sworn; so also he may upon a Tithingman who re-

fuses to make a Presentment.

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## (G)

I. WHERE the Steward of the I cet made an What is in-Order, that none shall receive into his quirable there, House any Person who is chargeable to the Parish, and what not. and this under such a Penalty, this is punishable in the Leet. Lane 55.

2. By several Acts of Parliament Authority is gi-

ven to the Leet to inquire of Offences.

3. I. Stewards of Leets have Power to hear and determine Offences against the Statute 4 Ed. 4. concerning \* Cloath made contrary to that Act, and \* 4 Ed. 4. may commit the Offenders till the Penalty is paid. cap. 1.

4. Cottages, those who build them without laying 31 Eliz. c. 1.

four Acres of Land to each Cottage.

5. Cross-bons, those who keep them contrary to 33 H. S. c. 6.

the Statute H. 8.

6. Fish, those who use Nets or Engines to catch a Eliz. c. 17. Fish contrary to the Statute; and the Steward must give this Act in Charge under the Penalty of 40 s.

7. Gaming-Houses, of such who keep Houses of Gaming contrary to the Statute † 33 H. 8. or † 33 H.8. c.9. such who use unlawful Games contrary to the Sta- ‡ 31 Eliz. tute ‡ 31 Eliz. cap. 1.

8. Hares, such who trace, destroy or kill any Hares 14, 15 H. 8. in the Snow.

9. Hand-guns, those who keep Hand-guns, &c. 33 H.8. c. 6. not being qualified.

What is in-

quirable in a

Leet, what

2 & 3 Ph. & 10. Highways, such who do not their Days Mar. c. S. Work in mending the Highways, contrary to the Statute.

11. Labourers, of Conspiracies amongst Labour-2 & 3 Ed. 6. cap. 10. ers, Workmen, Butchers, and Brewers, against the Revived per Statute. 22 & 23 Car.

12. \* Inmates, against those who take in In-

2. cap. 19. \* 31 Eliz. c. 1.

13. † Malt, of Offences against the Statute of † 2 Ed. 6. 2 Edw. 6. about making Malt. C. 10.

14. Musters, of those who make false Musters

4 & 5 Ph. & within the Statute. Mar. cap. 3. 15. Pheasants and Partridges, of those who kill 23 Eliz. c. 10.

them contrary to the Act.

16. Pound breach, this is not presentable in a Leet, because 'tis no Common Nusance, but excesfive Toll is inquirable there. 4 Leon. 12. \$\pm Sander.

‡ Antea (D) Son's Case. 17. Stone-horses, those who put Stone-horses on pl. 2. S. C. Commons under fifteen Hands high, fuch Pre-

32 H. 8. c. 13. sentments must be certified to the next Sessions; the Putting a scabbed or infected Horse on a Common is presentable as a Common Nusance.

\* I Jac. c. 22. 18. \* Tanners, of all Offences in Tanning.

31 Eliz. c. 5. 19. Trades, of those who use any Art or Myflery not being brought up to it.

20. Wine, of those who fell Wine contrary to the 7 Ed. 6. c. 5. Act.

What is inquirable in Leets, and what not.

Amerciaments (1) 1. S. C.

Amerciament.

(E) 5. S. C.

Leet. (C)

5. C.

21. In Trespass for Taking his Cattle, the Defendant justified as Bailiff for an Amercement in a Court-Leet, for that the Plaintiff left such Gates open ad nocumentum inhabitantium: Adjudged, this did not belong to the Leet, and that 'tis not inquirable there, and by Consequence not amerciable. Moor 356. Evington versus Brimstone.

22. In Replevin, &c. the Defendant made Conufance as Bailiff to T.S. fetting forth, that he had Leet within his Manor of H. and that at fuch a Court Leet there held on such a Day, &c. the Plaintiff was amerced to so much, O'c. for putting his Geefe on the Common within the Jurisdiction of the said Leet, which not being paid, the Defendant distrained, &c. and upon a Demurrer to this Plea the Plaintiff had Judgment, be-

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cause putting Geese on a Common is not punishable in a Leet, it being an Article not inquirable there. Cro. Eliz. 448. Wormleighton versus Burton.

23. This Court being derived out of the Sheriffs See 18 Ed. 3. Tourn, may inquire of all Offences except High Trea-See 1 Ed. 3. fin; but such which are to be punished with Loss cap. 16. of Life, are only inquirable, but not punishable

ludge of Affifes.

24. They may inquire of all common and publick Nusances done to the People within the Jurisdiction of the Court, but for no private Trespass; therefore a Man cannot be amerced in a Leet for surcharging a Common, because 'tis an Offence concerning a private Interest, and not the Publick. 1 Roll. Abr. Tit. Court. X. 6.

there, for such Offences must be certified to the

25. They have

of Affrays and Assaults, and of Nusances in the Highways; therefore where a Man was bound to scour and sence his Ditch, which he neglected to do, so that it was dangerous to pass the Highway next to it, he may be amerced in the Leet, and awarded to be distrained to perform it.

Licenfe. See Leafes by Coppholders.

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## Lunatick Copyholder.

#### (A)

Hutt. 16. S. C. 1 Brownl. 197. S. C. Lunatick Copyholder and his Estate is committed hath no Manner of Interest in such Estate, but only for the Benefit of the Lunatick himself, and therefore he cannot maintain an Action of Trespass in his own Name for any Thing concerning the Estate of the Lunatick; but the Action must be brought in his Name; neither can the Lord of a Manor commit the Custody of a Lunatick to another, without a special Custom for that Purpose.

2. Now the Reason why the Lord of the Manor shall have the Custody of a Lunatick Copyholder and his Estate, is, because otherwise he may receive some Prejudice in his Rents and Services; therefore where a Copyholder was deaf and dumb, and the Lord granted the Custody, &c. to W. R. who was then a Ward, who granted it over to B. B. who entered, and the Prochein Amy of the deaf and dumb Copyholder entered upon the last Grantee; and it was adjudged lawful, for none but the Lord or his Committee shall have the Custody of a Lunatick Copyholder, for the Reason before-mentioned. 2

Cro. 105. Evers versus Skinner.

Latch 234. S. C. 3. But the King shall not have the Custody of a Lunatick or Ideot Copyholder, and of his Estate, because at Common Law a Copyhold was no more than an Estate at Will; and the King cannot hold an Estate at the Will of another, by Reason of the Dignity of his Person; but if a Lunatick Copyholder alien his Copyhold Lands at full Age, such Alienation will be avoided by Office sound. 4 Rep. 123, 127, in Beverley's Case.

4. The Stewardship of a Manor was granted to R. B. for Life, and afterwards the Lord became a Lunatick; and by Inquisition was found to be Non compos mentis, and then the Custody of him and his Lands was granted to W. W. it was a Question whe-

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ther this Steward, by the Consent of W. W. the Committee, or whether W. W. himself by the Consent of the Steward might grant Copies, &c. according to the Custom of the Manor; and it was adjudged, that W. W. the Committee could not do it, because he had no Estate by Law in the Manor; for he was not so much a Dominus pro tempore, but that the Lunatick himself who was Lord of the Manor, might grant by his Steward Copies, &c. according to the Custom. Ley 47. Blewer's Case.

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## Manogs in general.

### (A)

Manor was formerly fuch a Compass of Ground, which was granted by the King to some Baron or great Person for him and his Family to dwell on, and to exercise some Jurisdiction within that Place, performing fuch Services, and paying such yearly Rent as the King did by fuch Grant require; and afterwards this Grantee parcelled out his Lands thus granted to him, to other inferior Persons, enjoining them to do such Services, and to pay fuch Rents as he thought ht; so that as the Baron or great Man to whom these Lands were granted by the King, was Tenant to the Crown; fo those other Persons of an inferior Degree, to whom he granted and divided his Lands, became Lords of Manors, and became lenants to him, and their Grantees were Tenants to them.

2. The Beginning of these Grants was some Time after the Conquest, for we read of no Manors before that Time; some tell us that its derived

\* This is rived a \* Manendo, because the Lord of the Manor Bracton's O-did usually abide or dwell there in a Capital Melpinion, who fuage; and they tell us, that Manerium eft feedum likewise tells nobile partim Vasfallis, quos Tenentes vocamus, ob certa merium pote- fervitia concessum, partim domino in usum samilia sue cum jurisdictione in Vassalos ob concessa pradia refervarit este per se tum ; terra qua Vassalis conceduntur dicta sunt Temex pluribus mentales, que Domino reservantur Dominicales; totum ædificiis covero feodum Baronium vocatur olim Baronia; from adjuvatum, five Villis & whence the Court which is held within fuch lu-Hamletis ad- risdictions is called the Court-Baron to this very Day. jacentibus; poterit etiam esse manerium & per se & cum pluribus Villis, & cum pluribus Hamletis adjacentibus, quorum nullum dici poterit

cum pluribus Hamletis adjacentibus, quorum nullum dici poterit manerium per se, sed Villæ seu Hamletæ; poterit etiam esse per se manerium Capitale & plura continere sub se maneria non Capitalia, & plures Villas & plures Hamletas, quasi sub uno Capite aut

Domino suo. Bratton, lib. 4. fo. 212.

3. By what hath been faid, it appears, that a Manor is a certain Compass of Lands to which a Jurisdiction is annexed in Vasfallos, and by the Civil Law, all those who have a Right to such Jurisdiction, may put in Officers to preside in their Courts of Justice, and they themselves are obliged to see that Justice be duly done by such Officers; and for that Purpose the Lords of Manors by our Laws and Customs are Chancellors, in their own Courts; and these Manors are either real or nominal; a real Manor is an antient Royalty, and confists in Demesses and Services, and a Court-Baron, as incident to it; and it cannot be a real Manor if it wanteth Freeholders, nor a customary Manor if it wanteth Copyholders. A nominal Manor is fo in Reputation only, as where the Lord transfers the Services of all his Tenants to T. S. and referves to himself the Demesses only, or where he puts away the Demesnes, and reserves the Services; in both which Cases the Lord hath only a reputed Manor.

4. But now a Manor rather signifies a Jurisdiction or Royalty incorporeal, than a Scite or Compass of Lands, because a Man may have a Manor in gross (i. e.) he may have a Right and Interest to hold a Cours-Baron with the Perquisites thereof;

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and another Person may have all the Land in that very Place; but such a Right must be enjoyed Time out of Mind; for a Manor cannot now be made, because a Court-Baron is incident to it, and it cannot be a Manor without such a Court, and two Suitors at least, and a Court-Baron cannot now be made.

5. A Manor is defined in the Law to be nomen Dyer 207. collectivum, comprehending Messuages, Gardens, Lands, Woods, &c. 'tis for this Reason that Lands in Lease

will pass by the Name of a Manor.

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6. In many Places a Parsonage is a Manor; as Godb. 3. where before the Statute quia emptores Terrarum, the Patron, Ordinary and Parson, granted Parcel of the Glebe to hold of the Parson by certain Services, that is a Manor.

of Freehold and Customary Tenants, of which there must be at least two Freeholders, but there may be a Manor where there is but one Freeholder; as for Instance, If all the Lands held of a Manor should escheat to the Lord, excepting the Lands of one Freeholder; or if the Lord of the Manor should selease all the Services and Tenures of his Tenants, were but two except only one Tenant, the Seigniory will still conceptional seigniory cannot be in gross, because it was never made a Feosffeparated from the Manor it self; therefore it must ment of the still be Parcel of the Manor, and if so, the Manor Copybold, who must continue; so it was held in 1 And. 257. and died; it was the same Point was held in 2 Lutw. in the Case of objected, that Tonkin versus Crocker.

ed, nor his Heir, because now the Manor was destroyed, there being but one Copyholder; but the Objection was not allowed. 4 Leon. 230. Bell versus Langley. Forseiture. (G) 3. S. C.

8. A Customary Manor may be held of an-Of Customary other Manor, and the Lord of such a Manor may Manors. hold Courts, and grant Copies of Lands, and the Kelway 131. Lands held of such a Manor may pass by Sur-S. P. render and Admittance, and likewise Fines shall be I Busst. 54.

2 Cro. 326. S. C. reported by the Name of Moor ver. Goodgrave.

paid

not be present-

paid upon Alienations or Descents; and if Lands held of fuch a Manor are forfeited, the Lord shall have the Services as annexed to the Manor: that there are several of these Customary Manors in England, and particularly the Manor of Aylesham in Norfolk is held by Copy, as it was adjudged in 11 Rep. 17. in Sir Henry Nevil's Case, S. C. reported in 2 Gro. 325, by the Name of Moor versus Goodgrave.

\* 1 Bulft. 57. S. C. Court-Baron. (A) 4. S. C.

9. The same Point was adjudged in \* 2 Cro. 259. in the Case of the King versus Stafferton, (viz.) that a Manor may be held of another Manor by Copy of Court Roll, and that the Lord of fuch a Manor may grant Copies, and that the Manor it felf will pass by a Surrender and Admittance of the Surrendree, and Fines shall be paid, &c. but that a Copyholder, who is Lord of fuch a Manor, cannot hold a Court-Baron to have the Forfeitures, or hold Pleas in a Writ of Right. because 'tis oppositum in objecto, that a Copyholder should hold such a Court, who is no more than a Tenant at the Will of the Superior Lord. 2 Cro. 259.

Of Manors

10. A reputed Manor will not pass either in a in Reputation. Fine or Recovery by the Name of a Manor, because those are Conveyances by Record which shall not be taken by Intendment. Cro. Eliz. 524. Mallet versus Mallet.

11. A Widow, who had a Title to Doner of a Manor, demanded it by the Name of the third Part of certain Messuages, &c. and had Judgment and Possession, and kept Courts, and granted Copies, Gc. Adjudged that the Grants were void, because she had no Manor, having only demanded Things in Gross; and tho' she pleaded that she recovered the third Part of the Manor per nomen of a Messuage, Oc. yet that will not make it a Manor even in Reputation; but if the had demanded the third Part of a Manor, it had been good. Godb. 135. Bragg's Cale.

Moor 190. S. C.

12. In Replevin, &c. the Defendant avowed for a Rent-Charge, letting forth that W. R. was feifed of the Manor of W. in Fee, of which Manor the Place where, Ge. was Parcel, and that the faid W.R.

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W. R. made a Feoffment thereof to one R. H. rendring Rent, and that the faid W. R. being feifed of the faid Rent died seised, and the same descended to his Son and Heir, who was feifed of the faid Rent as Parcel of the Manor, &c. and bargained and fold the Manor, and all Rents reputed Part of the faid Manor, to the Father of the Avowant, and so derives a Title to himself, and avers that the Rent at the Time of the faid Bargain and Sale, and long before, was reputed Parcel of the Manor: Upon a Demurrer to this Avowry it was adjudged, that this Rent did not pass by the Bargain and Sale to the Father of the Avowant, because there was nothing fet forth in the Avowry to shew that it was ever Parcel of the Manor; as that the Bailiff of the Manor had accounted for it as Parcel of the Manor, or that the Lessees of the Manor had enjoyed the Rent as Parcel thereof; which Things, or the like, had been good Matter to induce a Reputation, that it was Part of the Manor, but the bare Averment, that it was Parcel of the Manor at the Time of the Bargain and Sale, is not sufficient to induce a Reputation that it was fo. I Leon. 13. Foreman versus Bohun.

12. W. R. being seised in Fee of the Manors of Hob. 177. Great and Little Milton, and of the reputed Manor of S. P. Great and Little Chilworth in the Parish of L. and of Dyer 376. lands likewise in Chilworth, which he purchased of S. P. T.T. Anno 30 Eliz. and of other Lands which he purchased there Anno 1 Fac. covenanted to stand feised of the Manors of Great and Little Milton. and of several Closes (naming them) in Chilworth, and of all other his Lands to those Manors appertaining, to the Use of himself for Life, and afterwards to the Use of his Wife for Life for her Jointure, and after to the Use of his Son in Tail, Remainder to his own right Heirs; afterwards the Covenantor and his Son bargained and fold the Manors of Great and Little Milton, and the Lands thereunto belonging, or reputed as Part of the same, and levied a Fine by the Name of the said Manors, Oc. The Question was, Whether the Lands thus entailed, and the several Freehold Closes, thould pass together, because by the Entail they were divided from

## Manogs in general.

the Manors, being Parcel thereof before: Adjudged that these Freehold Lands were never severed from the Manors, but remained still in the Covenantor during his Life, and therefore shall pass as Parcel of the Manor; for being purchased, and afterwards enjoyed with the Manors, though but two Years before the Bargain and Sale; (though in Truth they were not Parcel of the Manor) yet they shall pass as reputed Parcel, because in such Case a little Time is sufficient to gain a Reputation. Cro. Car. 224. Sir George Symonds versus Sir Mich. Green.

1 Lev. 27. S. C. 2 Mod. 239. S. C. Sid. 190. S. C. 1 Mod. 25. 14. Tenant in Tail of the Manor of Lavington, and of two Closes reputed Parcel of the said Manor, suffered a common Recovery of the Manor with the Appurtenances; these two Closes were not really Parcel of the Manor, but were reputed so to be; and therefore it was adjudged that they should pass, especially since it appeared by the Deed to lead the Uses of this Recovery, that it was the Intention of the Parties, that the Closes should pass. I Vent. 51. Thynn versus Thynn.

15. In a Special Verdist in Ejestment the Case was, st. Lands which in Truth were not Parcel of the Manor of H. but were reputed to be Parcel thereof; and the Lord made a Grant of the Manor, and of all his Lands reputed Parcel thereof; the Jury found that these Lands were formerly Parcel of the Manor, but had been severed from it, and afterwards were re-united to it, and in the Possession of him who held the Manor, and have since been demised by Copy of Court-Roll, &c. and the Court held these were great Inducements of Reputation; and therefore these Lands shall pass. 2 Mod. 69. Lee versus Brown.

308. \* 1 Rep.

See Dyer

Co. Ent.

330, 884.

Cro. Car.

250.

that if a Disseisor, who hath a descasable Title to a Manor, grants a voluntary Estate by Copy of Court-Roll, (being forseited or escheated to him) this Grant shall not bind him who hath Right after he hath recontinued the Manor; but that Admittances made by a Disseisor to Copyhold Estates are good, because they are in Nature of judicial Acts, and shall bind the Disseisor.

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17. Where a Manor extended into four Towns, Cro. Eliz. 38. of which W. was one, and the Lord granted totum I Leon. 26. ill manerium de W. in W. it was adjudged, that by S. C. this Grant of the Manor of W. in W. it shall be See pl. 20. intended and construed his Manor in Reputation

there. Owen 138. Morris versus Page. 18. In Replevin for Taking his Cattle, &c. the Defendant avowed for an Amerciament in a Court-Leet. and in his Avowry he set forth, that he was seised in Fee of the Manor of H. and prescribed to have a Court-Leet, &c. the Plaintiff traversed the Seifin in Fee, Gc. and it was adjudged, that if H. had been only a Manor in Reputation, it had been sufficient for the Defendant to have maintain'd his Ayowry. I Brownl. 170.

19. The King made a Lease of the Manor of W. to Where by a L. R. Adjudged, that the Rents and the Reversion Lease of a of the Demesnes did pass by this Lease. Dyer 233. Manor the Demefnes pafs,

& e converso, and of the Demesnes of a Manor.

20. The Lord having a Manor which extended it self into two Towns, granted the Demesnes and Services of that Part of his Manor which extended into one Town, &c. Adjudged that the Grantee had a Manor in that Town, and that the Grantor had a Manor in the other. Cro. Eliz. 19. Harris verlus The Demesnes of a Manor are the Lands Nicholls. which are in the manual Occupation of the Lord for the Maintenance of himself and Family; 'tis a Word derived from the French Demaine, which fignifes an Inheritance, and that is derived from the Latin Dominium, because a Man hath a more absolute Dominion over the Lands which he keeps in his own Possession, than he hath over those Lands which he lets to his Tenants.

The Waste is Part of the Demesnes, for after the Lord had taken as much of the Demeines as he had judged sufficient for the Maintenance of the family, and distributed more to the Tenants, then the rest remained to him, and is called the Lord's Waste, he having neglected to apportion it at the

Creation of the Manor.

Cro. Eliz. 38. S. C.

21. Sir Francis Ascue was seised of the Manor of Cofford, which extended into two Towns, (viz.) into North and South Kelfey, and he granted his Manor of North Kelsey to H. S. and his Heirs: it was objected, that no Manor passed by this Grant, because North Kelsey was not a Manor at that Time: 'Tis true, Sir Francis Ascue, the Grantor had Demesnes and Services in North Kelsey, but those are only Part of a Manor, and not an entire Manor; therefore if they pass by this Grant, it must be in Gross, and not by the Name of a Manor: But adjudged, that he having Demesnes and Services in North Kelsey before he made this Grant, a new Manor shall arise there by 0. peration of Law by Virtue of this very Grant; and North Kelfey being within the Manor of Cofford, a Court-Baron may be held there, because it may be held at any Place within the Manor. I Leon. 26. Marsh verius Smith.

22. A Lease for Years was made by the Lord of the Manor of ten Acres, Parcel of the Demesses, rendring Rent, and afterwards he made a Lease of the Manor to another for twenty Years: Adjudged, that by this last Lease, the ten Acres, Parcel of the Demesses, passed not in Reversion after the Determination of the first Lease, but in Possession as Parcel of the Manor, because these ten Acres, Parcel of the Demesses, were never severed from the Manor, and by Consequence the Freehold still remained in the Lessor.

Dyer 350.

23. The Lessor made a Lease of the Scite of the Manor of H. with all the Lands thereunto appertaining; in this Case it was adjudged that the Demesnes did pass; but if the Lease had been of Lands appertaining to the Scite, there nothing had

paffed but the Manor. Owen 31.

Cro. Eliz. 462. S. C. 24. A Vicar was endowed of the third Part of the Tithes of the Manor of H. and a Question arising, Whether this Endowment should extend to the Demession only, or to that and the Freeholders; the Court held, that where a Lord of a Manor grants a Rent-Charge out of his Manor

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nor, such Rent shall extend to his \* Demessies only, \* The Debecause he shall not impose a new Charge upon mesnes of a the Freeholders; so likewise where the King grants Manor were to the Lord free Warren in his Manor, this shall usually let be construed to be in his Demesnes only, because for three Lives otherwise such Grant would impose a new Charge according to on others; but if the King grants Waifs and Estrays the Custom, in his Manor to another, fuch Grant shall extend &c. and the to the Lands of the Freeholders there, but in the Lord granted principal Case the Endowments being de tertia parte of the Manor decimarum bladorum & sæni quandocunque provenerint for Life, and de manerio de H. and that there can be no Manor afterwards without Freeholders; therefore the Vicar shall be conveyed the endowed of the third Part of the Tithes of Free- Manor to Sir holders, as well as of the Demesnes, and of the Wm. Clifton Lands of the Copyholders. Owen 59. Higham versus in Tail; the Rent was in Belt.

Grantee died, and so did the Tenant in Tail; and the Manor descended to his Son, who granted a Copyhold to W. R. then the Executor of the Grantee of the Rent, distrained this Copyholder for the Rent arrear; and it was insisted for the Copyholder, that the Distress was not lawful, because his Lands did not continue in the Seisin and Possession of the Tenant, who ought to pay the Rent, as he ought to do by the Statute 32 H. 8. But adjudged that the Lands of this Copyholder should be charged with this Rent, because he claimed by the Lord who was bound to pay it: "Tis true he likewise claims by the Custom, but that is not any Part of his Title, but only shows in what Manner he shall hold; therefore the Possession of the Copyholder is the Possession of the Lord who is Tenant of the Demesses, out of which the Rent issue. 2 Leon. 152. Cordell ver. Cliston.

25. In Sir Moyle Finch's Case it was adjudged, that by a Grant of the Demesses and Services the Manor it self did pass, and that by a Grant and Render of the Demesses the Manor will be destroyed, because in an Instant the Services and Demesses are severed by the Act of the Party himself; but 'tis otherwise, if the Severance had been by Act of Law, as by Partition, &c. 6 Rep. 63. 1. Resolution in Sir Moyle Finch's Case.

26 The Father being seised of the Manor of C. settled it on the Marriage of his Son to the Use of himself for Life, Remainder to his Son in Tail, I eases. (A) with Power to grant Leases for three Lives, or for 13. S. C. thirty Years, so as such Leases be not of the Demessine

Lands.

Lands, and afterwards he leased a Copyhold Tenement and Lands, &c. for thirty Years; in a special Verdict in Ejectment it was adjudged, that this Lease was void, because it was of Copyhold Lands, which are Parcel of the Demesnes; for by a Grant of Demesnes the Copyhold will pass; therefore where the Demesnes are excepted, (as in this Case they are) the Copyholds are excepted, and the rather here, because this Power is referved out of the Inheritance, and the Tenant for Life might destroy all the Copyholds by making such Leases; which seems very unreasonable. 2 Salk. 537. Winter versus Loveday.

27. A Lord of a Manor had Issue only two Daughters, and died seised of the said Manor, and afterwards the Daughters and Coheirs made a Partition of the Demesses; it was adjudged, that by this Partition the Demesses were now become in Gross, and severed from the Manor. I Leon. 204

Thetford versus Thetford.

1 Inst. 58. b. 2 Roll. Abr. 121, 122. A Manor is extinct if all the Freeholders but one escheat, or if the Lord purchaseth all the Freeholds, or if there is but one, or no Suitors in a Court-Baron, and a Customary Manor is lost where there are none, or but one Copyholder.

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i. HE who builds a Pidgeon House without the Fleta tells ils License of the Lord of the Manor, may what a Lord be liable to a special Action on the Case at his Suit, of a Manor because 'tis an Encroachment on that Privilege ought to be, which the Law gives him; but he cannot be pu- (viz.) In omnished for it by any other Profecution, either by nibus & fu-Indictment, or otherwise, as a common Nusance; pra omnia for if it was such a Nusance, the Parliament would esse veranever have made any Statute to punish those who cem, & in shoot Pidgeons; neither could a Dovecote be lawful- operibus fily erected by any License whatsoever; because a delem, Common Nusance is malum in se, and therefore not Deum & ju-to be tolerated or justified by License or Prescrip- fliciam ation; but the Erecting a Pidgeon-House is so far from fraudem & being prohibited by Law, that in some Respects peccarum of its considered before Land; as for Instance; A Piddientem, madientem, mad geon-House is demandable in a Pracipe before any levolos & Land on which there is no Buildings; and the injuriofos Owner of a Pidgeon-House, whether old or new, contemnenand the built without License of the Lord, may tem, & apud jultify the Taking any Hank which he shall see de- proximos pifroying his Pidgeons at his Dovecote.

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mobilem & plenum; ipsius enim interest potius consilio quam viribus uti propriove arbitrio, &c. Lib. 2. cap. 65. & 72.

2. Lords of Manors are to grant Admittances to Co. Lit. 58. b. Copyhold Estates; now as to such Admittances it hath been held that Tenant for Years, or Tenant by Statute Merchant, Staple or Elegit, who are not properly seised but possessed, are Domini pro tempore, and as such may not only admit the Tenants, but grant voluntary Copies of antient Copyholds; and in some particular Cases an Estate may be granted by Copy by one who is not Dominus pro tempore; as tor Instance; Where a Lord of a Manor by his Last Will duly executed in Writing deviseth, that his Executor

Executor shall grant the Copyholds, &c. according to the Custom of his Manor for the Payment of his Debts; in such Case the Executor, tho' he hath nothing in the Manor, may grant Copies.

What Asts a 3. A Lord of a Manor may distrain his Copyhold Lord of a Ma-Tenant for Services, or he may seise his Lands. No

nor may do, 153. Rivet versus Downs. and what Ats

bind him. See Free Bench. (A) 10.

Moor 842. S. C. I Roll. Rep. 125, 195. S. C. 2 Bulft. 337 S. C.

4. If a Lord of a Manor should refuse to admit one to a Copyhold, who is nominated by the Copyholder in Possession, according to the Custom of the Manor, to be his Successor, he cannot bring an Action on the Case against the Lord, but must exhibit a Bill in Chancery against him, and that Court will decree him to admit the Successor. 2 Cro. 368. Ford versus Hoskins.

Antea Title Free Bench, pl. 10. S. C. 5. Where a Widow by the Custom of the Manor is entitled to her Widow's Estate dum sola & casta viveret, and she should live incontinently, and afterwards the Lord admits her to her Free Bench, having no Notice that she was incontinent, such Admittance shall bind him. Wheeler's Case, 4 Leon. 240.

Fines. (A) 1. S. C.

6. The youngest Son of a Copyholder in Borongh-English died without Issue, the second being then beyond Sea, and the eldest Son pretending that his Brother died beyond Sea, and likewise without Issue, got to be admitted, and then surrendered to the Use of W. R. and his Heirs; afterwards the Lord of the Manor being informed, that the second Son was living beyond Sea, caused three Proclamations to be made at three several Courts for him to come in and be admitted, which he neglected to do; and thereupon the Lord seised the Copyhold as forseited: Adjudged, that by his Admittance of the eldest Son, and by his accepting a Surrender from him to another, and admitting the Surrendree, the Lord was bound. 2 Cro. 226. Underbill versus Kelsea. 2 Cro. 101. \* Whit-

\* Godb. 268. Cro. 226. Underbill versus Kelsea. 2 Cro. 101. \* Whits. C. ton versus Williams. S. P.

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7. The second Resolution in Melwich's Case is, Admittance. that where a Lord of a Manor hath several antient (C) 6. S. C. Freeholds held of his Manor, and grants the Inhe-Court-Baron. ritance of all them to another, so that by such (A) 2. S. C. Grant they are severed from the Manor; yet the Grantee may hold Courts for the Customary Tenants and accept Surrenders and make Admittances and Grants; for every Manor confishing of Freeholders and Copyholders hath in Effect two Courts; the one a Court-Baron for the Freeholders, and in this the Suitors (i. e.) the Freeholders are Judges; and the other is a Customary Court for the Copyholders, and in this the Steward, or the Lord of the Manor himself is Judge, and though in Strictness of Law, after the Grant of all the Freeholds from the Manor, 'tis no longer a Manor, because it wants Freeholders; yet the Grantee may hold fuch Courts for Copyholders as the Grantor himself might have done; so if all the Freeholds escheat, or the Lord of the Manor releases the Tenures and Services, yet he may hold a Customary Court for the Copyholders; and though by his own Act he cannot have two Manors out of one, to confift of Demeans and Freeholders, yet he may make a Customary Manor of Copyholders. 4 Rep. 26, in Melwich and Luter's Cafe.

8. In the same Case it was held, that a Lord of a Manor may grant Copyholds, or make Admittances of Copyholders at any Place out of the Manor, but that his Steward cannot; for these are Acts which he must do within the Manor, and not else-4 Rep. 26, the last Resolution in Melwich where. and Luter's Cafe.

9. Tenant by Homage, Fealty and Escuage, (all Services. which are now taken away by \* Act of Parliament) \* 12 Car. 2. and Suit of Court twice in a Year; the Lord of the cap. 23. Manor was seised of the Fealty only by the Hands of the Tenant; it was resolved the Seisin of Fealty was a good Seisin of all the faid Services, for when the Tenant did Fealty, he always made Oath to be faithful and true to the Lord of whom he held his Lands, and to perform all the lawful Customs and Services of the Manor; and that though Homage was the most humble Service a Freeholder could do

to his Lord, yet Fealty was the most facred Service. because that was always upon Oath; and Seisin of any Part, even of any Service, was a Seisin of the whole Service, which Services were formerly so regarded in Law, that where they were not performed, no Distress for them could be too excesfive; and though it was made so often that the Tenant could not manure his Land, yet he could not

have an Affile.

10. Resolved, that Seisin of a Superior Service is a Seisin of all inferior Services incident to it, as a Seisin of Escuage was a Seisin of Homage and Fealing a Seisin of Homage was a Seisin of Fealty, and 10 was a Seisin of Rent, where the Seigniory was by Fealty and Rent; that the Seisin of Rent or Suit of Court, or any other annual Service was a Seisin of Eschage, Homage, Fealty, Ward, Relief, Heriot-Service, and of the Service to cover the Hall of the Manorhouse, or to impale the Park of the Lord, which might not happen in fixty Years, but that the Seifin of one annual Service was not a Seisin of another annual Service; as for Instance; A Seisin of Rent was not a Seisin of Suit of Court. 4 Rep. 8. Bevill's Cafe.

1 Leon. 2. A Court of compel bim to Surrender.

The Lord of a Manor is Chancellor in his own Court, therefore if a Copyholder furrenders to the Chancery will Use of T. S. in Trust, that he shall hold the Lands till he hath raised such a Sum out of the Profits, and that afterwards he shall surrender, Ge. to the Use of E. G. The Money was raised, and T. S. refused to make the Surrender, Oc. then E. G. exhibited a Bill to the Lord of the Manor against T.S. who decreed against him, that he should surrender, and he still refused: Adjudged that the Lord might feise, and admit E. G. to the Copyhold.

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# Pleadings in Copphold Cafes.

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See Admittance. (G) Placito 3.

#### (A)

HE Father being seised of Copyhold Consuerudo Lands, devised the Guardianship of his manerii & Son to one, and the Lord of the Manor granted it voluntas Doto another; and in Replevin he pleaded, that eo mini. quod it belonged to him, secundum consuetudinem manerii de B. to assign Guardians to Infants Copyholders of the faid Manor; he did affign M. B. to be Guardian to fuch an Infant Copyholder, &c. and at a Court, &c. held on such a Day, he did admit her Guardian, and afterwards admitted the Infant, &c. it was held that this Plea was ill, because the Defendant did not positively set forth that there was such a Custom within that Manor for the Lord to assign Guardians, &c. it should have been, that infra manerium pradict' talis habetur consuetudo, and then he should have set forth the Custom; it had been good likewise, if he had pleaded eo quod it belonged to him to affign Guardians, O'c. & a tempore cujus contrarii memoria bominum non existit, &c. Cro. Eliz. 185. Latch 138. Allen 68. S. P.

2. Account by an Administrator of W. W. an Infant, for that the Defendant had received the Profits of the Lands as Guardian to the said Insant, which were granted to his Father by Copy of Court-Roll, tenendum secundum consuerudinem manerii, &c. who entered, and died seised, and the Insant who was his Son and Heir was also dead; the Defendant pleaded, that he did not receive the Profits as Guardian, &c. After a Verdict for the Plaintiff, it was objected in Arrest of Judgment, that by the Pleading, the Lands were granted by Copy of Court-Roll, secundum consuerudinem manerii, &c. by which it appeared they were Copybold, and if so, an Action of Account would not lie against P 4

\* r Roll.

Wossel ver.

† 2 Lutw. 1165. S. P.

Hill versus

Demurrer.

Bolton on a

## Pleadings in Copphold Cales.

the Receiver of the Profits of fuch Lands: But adjudged these Lands may be intended to be Freehold, because they are not said to be held ad voluntatem Domini; 'tis true, they are faid to be held by Copy of Court-Roll secundum consuetudinem manerii. but that will not make them Copyhold, because in many Places \* Freeholds have been granted by Co-Rep. p. 411. py, and by the Rod. Cro. Car. 166, 229. Hughes versus Harris.

Yelton. 3 Bulft. 230. S. C. See Customs of Manors. (C) 20.

> 3. The like Point was adjudged in the Case of Rogers versus Bradley, which was thus, ff. In Replevin, the Defendant made Conusance as Bailiff of J. M. setting forth, that he was seised in Fee of the Place where, &c. being Parcel of the Manor of Liscard; and leased the same to S. R. for ninetynine Years, if W. W. should so long live, rendring Rent; that the Lessee entered; that J. M. being seised of the Reversion in Fee, secundum consuetudinem manerii, (but did not fay † ad voluntatem Domini) did at such a Court surrender, Gc. and upon a † Demurrer to this Conusance it was held ill: because the Lands on which the Distress was made, shall be intended to be Freehold; for it was not al-Jedged, that J. M. was seised, &c. in Fee, according to the Custom of the Manor, &c. ad voluntatem Domini; therefore the Reversion could not pass by Surrender and Admittance without a special Custom for that Purpose, which the Defendant ought to have set forth, (viz.) that infra manerium, &c. de tempore quo, Oc. talis habetur consuetudo; for the Words secundum consuetudinem manerii, without adding more, only shew a Custom by Implication. 2 Vent. 143. Rogers versus Bradley.

2 Leon. 29. S. P. 1 Cro. 185. S. P. Vaugh. 2)3.

# 1 Salk. 364. S. C.

S. P.

a Demurrer, and the like Judgment was given after a Verdict, (viz.) ‡ The Plaintiff brought an Action on the Case for disturbing him in his Common, appertaining to his Copyhold Messuage, setting forth, that he was seised of a Messuage, and of ten Acres of Land in N. Parcel of the Manor

4. The Case last mentioned was adjudged upon

of Wakefield, which he held in Fee by Copy of Court-Roll fay . tiff) Rigi Enjo Cafe was Dom fus (

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Roll secundum consuetudinem manerii, but did not say ad voluntatem Domini, and that he, (the Plaintiff) ut tenens Custumarius of the said Manor, had Right of Common in W. but was disturbed in the Enjoyment thereof by the Desendant; in this Case after a Verdict for the Plaintist, the Judgment was set aside, because these Words ad voluntatem Domini were omitted. 1 Lutw. 126. Cromther versus Oldseild.

5. But Serjeant Salkeld, who reports the same I Lutw. Case, tells us, that this Judgment was reversed; who tells us, for the Plaintiff had set forth, that the Tene-that a Writ ments were Parcel of the Manor, and that he, nt of Error was tenen' Custumar' of the said Manor, had Right of brought, and Common, &c. and the Verdict had sound as the was then de-Plaintiff had laid it, that the Tenements were pending for Parcel of the Manor, &c. which could never be, Judgment. unless they had been Copyhold. 1 Salk. 364. Crom- See the Plead-

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Case in the Appendix, Pleading, pl. 28.

ings in this

6. In Trespass, &c. the Defendant pleaded, that See the Pleadthe Earl of S. was seised in Fee of the Manor of ings in this
G. of which such a Messuage, and sorty Acres of Case in the
Land, were Parcel, and dimissa & dimissabilia in Fee Appendix,
by Copy of Court-Roll, ad voluntatem Domini se-pl. 27.
cundum consuetudinem manerii; now so far this Plea
was right; but then the Desendant proceeds, that
the said Tenements were descendable, and which do
descend from Ancestor to Heir in a Course of Successon called Tenant-Right, which is repugnant to
what was alledged before, (viz.) that they were
demisable in Fee by Copy of Court-Roll, ad voluntatem Domini, &c. and for this Reason the Plaintiss \*\* Antea
had Judgment. 2 Lutw. 1324. \*\* Hutchinson versus Customs. (A)
Jackson.

7. Error in B. R. upon a Judgment in C. B. in I Lev. 293. an Action on the Case, wherein the Plaintiff de-S. C. clared upon an Agreement between him and the Defendant, to surrender certain Copyhold Lands to the Use of the Desendant, in Consideration of so much Money to be paid by him to the Plaintiff; then he sets forth, that he did surren-

der into the Hands of J. W. and L. R. two customary Tenants, secundum consuetudin manerii: It was insisted for the Defendant, that the Promise was to surrender generally, which must be either to the Lord, or his Steward, and not to two Tenants, &c. and the Allegation secundum consuetudinem manerii, is not sufficient without averring that there is such a Custom; but the Judgment was affirmed. I Mod. 61.

Turner versus Benny.

8. In the fecond Resolution in Brown's Case, it was held, that though every Admittance amounts to a Grant, and may be pleaded as such, and that nothing vests before Admittance; yet 'tis otherwise in the Case of an Heir, for he in pleading may alledge the Admittance of his Ancestor as a Grant, and shew the Descent to himself, and that he entered, and this without any Admittance; but he cannot plead, that his Ancestor was seised, &c. by Copy, &c. and that he died seised, and so the Copyhold Lands descended to him; because such Estate is in Judgment of Law no better than an Estate at Will, though 'tis descended by Custom. 4 Rep. 22. in Brown's Case.

Leafes.

Seifin.

9. In Ejectment, the Defendant pleaded, that the Lessor of the Plaintiss is a Copyholder, and that he furrendered the Lands to the Use of the Desendant and his Heirs, who was thereupon admitted; and that the Plaintiss entered on him; and upon a Demurrer to this Plea, the Plaintiss had Judgment, because he declared in Ejectment upon a Lease at Common Law; and the Desendant had pleaded, that the Plaintiss was a Copyholder; and is so, then he could not make a Lease michout License, which the Desendant did not alledge; therefore he neither consessed or avoided the Lease on which the Plaintiss had declared. Cro. Eliz. 728. Kensey versus Richardson.

10. Where Seisin of a Copyholder in Fee is pleaded, and the Party claims under such Copyholder, in such Case he must shew of whose Grant; but if he sets forth the Admittance of the last Heir, such Admittance is in Nature of a Grant, and may be pleaded as a Grant. 2 Cro. 103. Pistor versus

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11. In Trespass, &c. the Defendant justified for that the Place where, Oc. was the Freehold of W. W. and that he (the Defendant) entered by his Command; the Plaintiff replied, that the Place where, Gr. was Copyhold and demisable in Fee; and that R. L. was seised thereof in Fee by Copy of Court-Roll, &c. (but did not fet forth, that it was granted to him in Fee,) and that he died seised, and that the Lands descended to his Daughters who were his Coheirs, who were admitted, and made a Lease thereof to the Plaintiff; and upon a Demurrer to this Replication, the Defendant had Judgment, because the Plaintiff had not made a good Title to these Lands. for they being Copyhold, 'tis not sufficient to alledge, that such a Person was seised thereof in Fee, but he must shew of whose Grant, (viz.) he must fet forth, that it was granted to him, &c. Cro.

Car. 137. Sheppard's Cale.

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12. In Trespass, &c. for Taking his Cattle, the Defendant pleaded, that at the Time of the supposed Trespass seisitus fuit of several Lands, Oc. ut de statu custumar' hareditario, which said Lands were descendable from Ancestor to Heir according to the Custom of the Manor of H. and so justified the Taking of the Cattle Damage-fefant; and upon a Demurrer to this Plea, it was infilted for the Defendant, that it was good, though he had only set forth, that seisitus fuit of the Lands, Gc. without shewing in what Manner he was seised; and that if instead of seisitus fuit, he had faid, that possessionat fuit, it had been certainly good; for he being charged with a Wrong, might have justified upon his Possession without setting forth a Title; but Helt Chief Justice was of another Opinion, (viz.) that where Seisin is pleaded of a Copyhold by Way of Fustification of a Wrong, in such a Case, the Commencement of the Title must be set forth, which might eafily have been done in the Principal Cafe, by fetting forth the Admittance of the Heir, either upon a Surrender or Descent; for such Admittance amounts to a new Grant, 4 Mod. 346. Robinson versus Smith.

13. In Ejectment, &c. the Defendant pleaded, that the Lands were held of the Manor of D. &c. which is ancient Demesne; the Plaintiff in his Replication confessed, that the Lands, &c. were held of the Lord, &c. ut de manerio, which is ancient Demesne, but that the said Lands were Copyhold; and upon a Demurrer, it was adjudged, that this Replication was repugnant in it self; for in this Case the Lands being held ut de manerio must be Frank-see; for they cannot be Copyhold, because Copyhold Lands are Parcel of the Manor, and therefore they cannot be held of the Lord ut de manerio, &c. 1 Salk. 185. Brittle versus Dade. 3 Lev. 405. S. C.

14. If Lands are granted by Copy of Court-Roll, which were never so granted before, and the Issue is, Whether the Lord granted the same by Copy of Court-Roll, secundum consuetudinem manerii, the Jury must find non concessit; for though Dominus de facto concessit, yet it was not secundum consuetudin manerii. 1 Leon. 55. Kemp versus Carter.

15. In Ejectment, the Defendant pleaded, that the Lands were Copyhold held of the Manor of H. of which W. R. was seised, &c. and surrendered the same into the Hands of B. B. Steward of the Manor, to the Use of the Desendant, &c. who was thereupon at such a Court, &c. admitted; the Plaintiss replied, and concluded his Replication with a Traverse, that B. B. was Steward; and upon a Demurrer to it, Adjudged that a good Issue could not be taken upon this Traverse, for he ought to have concluded absque boc, that W. R. made any Surrender, &c. Cro. Eliz. 260. Wood versus Butts.

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# Prescription by Copyholders.

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#### (A)

IS generally held, that where a Copyholder claims any Right, he cannot prescribe to such Right in his own Name, because of the Meannels of his Estate, but that he must prescribe in the Name of the Lord of the Manor; therefore where he claims a Right of Common in fuch a Place within the Manor of B. he must prescribe, that the Lord of that Manor, and all his Ancestors, and all those whose Estate he had therein, have had Common in such a Place, Ge. for him and his Tenants at Will; but where he claims any Profit out of the Soil of the Lord himself, there he cannot prescribe in the Lord's Name, but must alledge an Usage in Fact; as for Instance thus, viz. that within the Manor of B. Time out of Mind there hath been such an Usage, &c. 6 Rep. 59. Gate- Cro. Eliz. ward's Case.

2. Therefore where a Copyholder brought an Ac- Moor 461. tion on the Case in which he declared, that in the Ma- S. C. nor of W. there had been Copyholders Time out of Mind; and that during all that Time, there had been an Usage in the said Manor, that every Copyholder, &c. for every Acre of Land which he held of that Manor, should have Common in the Lord's Waste; this Declaration was adjudged good; and the Reason was, because he could not prescribe but in the Right of the Lord of the Manor; therefore he may make a Title to himself by Way of Usage. Goulds. 133. Peirce versus Baker.

3. Tis against the Nature of a Custom of a Manor, to apply it to a particular Tenant within the Manor; therefore where in an Action on the Cafe, the Plaintiff declared, that he was possessed of an antient Watermill in G. and that the Custom of the Manor of B. in the faid Parish of G. was, that every Tenant dwelling in an antient Messuage, and to which twenty Acres of Land within that Manor did

390. pl. 12.

did belong, did always bring his Corn yearly growing on the said Lands, as long as he dwelt in the said Messuage, to the said Mill to be ground, and so brings his Case within the Custom; and upon Not guilty pleaded, the Plaintiff had a Verdict and Judgment; but it was set aside, for the Reason before mentioned, (viz.) because a Custom of a Manor cannot be applied to a particular Tenant of that Manor, unless it be in the Case of a Coppholder; for he may apply a Custom in a Parish to a particular Place within that Parish, because he cannot prescribe. I Luty. 126. Nicholson versus Smith.

Cro. Car. 418. S. P. 1 Vent. 97. S. P.

4. A Prescription by a Copyholder of Inheritance was thus, s. Quod infra manerium de B. talis habetur consuetudo a tempore quo, Sc. quod quilibet tenen Custumar ejusdem tenementi, (but did not say ejusdem manerii) habuit & habere consuevit commun, &c. tanquam ad tenemen prad pertinen, and because those Words were lest out of this Prescription it was held

ill. Dyer 70. Isham's Case.

2 Saund. 324. S. C. 1 Mod. 74. S. C. 2 Lev. 2. S. C.

5. In Replevin, &c. the Case upon the Pleadings was, that the Place where, Oc. was Waste Ground and Parcel of the Manor of A. in which there were Copyholders Time out of Mind; and that there is a Custom in that Manor, that the Copyhold Tenants should have solam & separalem pasturam of the Waste as belonging to their Tenements; and that the faid Tenants licenfed him (the Defendant) to put in his Cattle; the Plaintiff traversed the Custom, and the Defendant took Issue upon the Traverse, and had a Verdict and Judgment, (viz.) that there was such a Custom; and these Objections were made to the Conusance, (viz.) that the Custom, as it was laid, to have the fole Pasture, &c. was void, because the Lord of the Manor would thereby be excluded; but if the Custom had been good, yet the Conusance is ill, because the Defendant had not shewed, that the Tenants of the Manor had the fole Feeding of the said Waste for their Cattle Levant and Couchant on their Tenements; besides he justified under a License given him by the faid Tenants, but did not fet forth, that it was by Deed executed; but adjudged, that this Prescription was good, for the Lord of the Manor

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was not excluded from all the Profits of the Soil, because there might be Trees there growing, or Mines under the Soil; and that in this Cafe it was not necessary, that the Cattle should be Levant and Couchant, &c. because the Defendant claims solam pasturam, which may be by any Cattle whatioever; and lastly, 'tis not necessary for the Defendant to set forth, that he was licensed by a Deed, &c. because it passeth no Interest; for 'tis only an Excuse for the Trespass supposed to be done by 1 Lev. 269. 1 Vent. 123, 163. Hoskins versus Robbins.

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## Pzelentment.

Presentment is an Information in Court to A inform the Lord, or his Steward, with the Surrender out of Court, which is not effectual till presented in Court; and by the general Cuflom of this Realm, the Presentment is to be made at the next Court after the Surrender, otherwife the Surrender is void; but by special Custom of some Manors, it may be made at the second or third Court; and this Presentment is to be made in Court by the same Persons, who took the Surrender out of Court; and it must be in all material Points according to the Surrender, therefore if the one is conditional and the other absolute, 'tis void; but if by the Negligence of the Steward the Condition is not entered on the Roll, this being proved in Court, the Roll shall be amended.

2. If a Surrender be out of Court, and the Surrenderor dieth before tis presented, yet a Present-ment after his Death is good; so if he to whose Ule the Surrender was made dieth before tis prefented, or the Persons into whose Hands the Surrender was made; yet upon Proof that fuch a Surrender was made, the Lord will be compelled to

admit. 3. But if they into whose Hands the Surrender was made, refuse or neglect to present it, then upon a Petition exhibited to the Lord, the Party grieved shall have Remedy; but if the Lord will not do right, then both he and those who took the Surrender may be sued in Chancery, and there the Party will be relieved.

## Releafe.

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4 Rep. 25.

HE Heir at Law, or he who hath the Right, released to a Copyholder who had been admitted and in Possession: Adjudged this Release was a good Bar.

## Relief.

#### (A)

I. A Fendatory or beneficiary Estate was at first granted at Will, and then such Estates in Lands were called Munera; afterwards they were granted for Life, and then they were called Beneficia, which Word is still retained amongst the Ecclesiasticks, whose Estates are called Benefices, and at last they were made Hereditary.

2. When these Estates were granted for Life, in such Case after the Death of the Vassal or Tenant, they returned again to the original Grantor or Lord, and his Heirs, and then it was feudum caducum, because it was returned or fallen again to the

Chief Lord.

3. But though by the Connivance or Consent of the chief Lords, those feudatory Estates which were at first at Will, then for Life, were turned into Inheritances; yet when the Owners of those Estates died, the Inheritance thereof was supposed to be fallen to the Lord, tho in Fact it was not so, for that

that was in the Heir of him who died last seised. who probably, as an Acknowledgment of the Lord's Confent in turning these Estates into an Inheritance, did, after the Death of his Anceltor, pay to the Lord a Sum of Money relevare hareditatem caducam out of his Hands, (viz.) the Inheritance which was supposed to be fallen to him, and which in Truth at first it did, and this is called a Relief, which is a Payment now established by Custom, though 'tis of a (A) younger Date than Heriot-Services; for these were Oxen, Horses, &c. which were paid in the Saxon Times to the faid Lord, upon the Death of his Tenants; but the Payment of Reliefs began sometime after the Conquest; for in those Days no Tributes of Oxen or Horses could be paid by the English, because they were stript of all such Goods by the Normans; therefore instead thereof, this Payment of a Sum of Money was substituted, which is now called a Relief; and 'tis continued in many Places to this Day, and paid unto the Lord by a Freeholder of full Age, upon the Death of his Ancestor, when he taketh Possession of the Inheritance, and for this the Lord may diffrain, but cannot have an Action of Debt; but his Executor or Administrator may have an Action of Debt, and they cannot distrain.

There are two Sorts of Relief, viz. Relief-Service and Relief-Custom; the one is paid upon the Death of any Freeholder, the other is paid, not only upon the Death, but upon the Alienation of any Freeholder, according to the Custom of the Place, which in some Places is half a Year's Profit of the

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(A) We find in the Book called Demesday, that 1 Inst. 76. Tainus vel miles Regis dominicus moriens pro relevamento dimittebat Regi omnia Arma sua & equum unum cum sella, & alium fine sella, quod si essent ei Canes vel accipitres prastabantur Regi ut si vellet acciperet.

Glanvill tells us, that Dicitur rationabile relevium ali- Lib. 9. cap.6. cujus juxta consuetudinem regni de feodo unius Militis Cen- Bracton, lib. tum solidos, de socagio vero quantum valet census ejusdem So- 2. cap. 36. cagii per unum Annum, de Baroniis vero nibil certum fatutum est quia juxta voluntatem & misericordiam Domini Regis solent Baronia Capitales de Releviis suis Regi satisfacere. Land,

Land, and in some double the Rent of the Year,

and 'tis paid by Freeholders only.

4. But the Payment was very incertain till the Statute of Magna Charta, cap. 3. for sometimes it was paid in Money, and sometimes in other Things; but by that Statute it was made certain. (viz.) the 4th Part of the annual Revenue which was requifite by the Law to support the Dignity of the Person to whom the Inheritance was descended. (viz.) if it was to the Son of a Knight, then he was to pay 5 l. because 20 l. per Annum was then accounted sufficient for the Support and Maintenance of a Knight; if to the Son of a Baron, then he was to pay 100 Marks for a Relief, because 400 Marks per Annum was then an Estate for a Baron: if to the Son of an Earl, then he was to pay 100 l. because 400 l. per Annum was an Earl's Estate; if to the Son of a Duke, then he was to pay 200 l. for a Relief, that being the 41b Part of 800 l. which was then a Duke's Estate; and fuch Estates were then accounted sufficient to support those Dignities. 9 Rep. 122. In Lowe's Cafe.

5. In the Case before-mentioned, my Lord Coke tells us, the Lands must come to the Heir by Defcent, otherwise no Relief was to be paid; for many Bishops and Abbots in those Days had Baronies, and yet they paid no Reliefs, because they came to them by Succession, and not by Descent. Ibid.

6. The Heir of every Ancestor who held by \* This was a \* Knights-Service was to pay a Relief, and where-Tenure by ever there was a Title of † Wardship, there was which several

Lands were held of the King, which drew with it Homage, Service in the War, Wards and Marriage of the eldest Son; 'tis now taken a-

way by the Statute 12 Car. 2. cap. 24.

† The Heir of the King's Tenant holding by Knights-Service, or in Capite, or of any Common Person, by Knights-Service, was called a Ward, during his Minority; and the King by his Prerogative had Primer Seisin of his Lands till he was of Age; and then the said Heir was to sue out a Writ to obtain the Possession or Seisin of his Lands which was called his Livery.

The Court erected for the Care of the Estates of these Wards, was in the Reign of H. 8. and asterwards augmented with the Office of Liveries, now taken away by the Statute 12 Car. 2. cap. 24. but from thence it was

called the Court of Augmentation.

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likewife a Relief to be paid; and though the Court of Wards is now taken away by the faid Statute 12 Car. 2. 'tis probable, in many Places, Reliefs are

still paid where none are due by Law.

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7. A Relief may be due by Tenure, as a Man may hold Lands of T. S. as of his Manor of H. by Payment of Rent, and a Customary Relief of one Year's Value of his Land by the Heir; and in luch Case the Lord may distrain for it, and this was the Case of Hungerford versus Haviland, (viz.) Custom of a Manor, that every Free Tenant thereof upon every Alienation of their Tenancy, shall pay to much by Way of Relief as their yearly Rent-amounts to; it was objected, that this is not properly a Relief, but a Fine for an Alienation due by Custom; and therefore a Distress could not be taken for it unless by Custom; but adjudged that the Tenant holding by the Payment of 5 s. Rent, and a Relief cum acciderit, according to the Cultom of the Manor, that this shall be intended a Relief by Tenure; for though at hill tis faid, that fuch Relief was due by Cuflom of the Manor, yet afterwards 'tis expresly al- \* Latch 37, ledged, that the Tenant held by paying a Kelief 95, 130. S.C. cum acciderit. W. Jones 131. \* Hungerford versus 3 Bulit. 323. Haviland.

8. In Replevin, the Defendant made Conusance Moor 643. as Bailiff to T. S. for 20 s. for a Relief, &c. the S. C. Plaintiff replied, that the Tenant died feised, and 1 And. 178. that the Lands descended to Coparceners, who S. C. made a Feoffment thereof to him and his Heirs; and Amerciament. that the faid T. S. Lord of the Manor, &c. (and in (C) 1. S. C.

whose Right the Defendant made Conusance) knowing the faid Feoffment was made to the

Plaintiff as aforefaid, did afterwards accept the Rent of him; and upon a Demurrer to this Replication, the Defendant had Judgment, because the \* Accep. \* 3 Rep. 66. tance of the Rent from the new Tenant was no Bar S. P.

of the Relief due from the old Tenant. Cro. Eliz. In Pennant's Cale, and that

886. Parham vertus Norion.

an Action of Debt will lie for a Relief, but not by an Executor. 1 Inft. 47. Dyer 24.

9. So in Replevin the Defendant made Conusance as Bailiff to Sir Thomas Meers, for that George Lord

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Coventry held the Place where the Cattle were take ken, Gc. of Sir Thomas Meers as of his Manor of Prescot by Fealty, and by the Rent of 3 1. 8 s. and Suit of Court, of which Services he was feised by the Hands of the faid George Lord Covenery, &c. and that he died, and the Tenements descended to John now Lord Coventry, and for 31.8 s. for a Relief of the faid John Lord Coventry, after the Death of the aforesaid George, he made Conusance, Oc. and upon a special Demurrer to this Conusance, for that the Defendant did not set forth, that Sir Thomas Meers had any Title to this Relief; it was adjudged for the Defendant, that he need not fet forth any Title to it; for though a Relief is not Parcel of the Tenure, yet 'tis incident to every Tenure in Socage as a Flower thereof; it may be released, or there may be a special Reservation upon the Tenure without any Relief, but then it must be shewed on the other Side; for it shall never be intended, because of Common Right a Relief is incident to every Tenure. 3 Lev. 145. Freeman versus Booth.

10. In Trespass for Breaking his House, and taking a Chafindish, the Defendant pleaded, that the House wherein the Trespass was supposed to be done, was held of W. R. as of his Manor of C. by Homage, Fealty, Escuage, Suit of Court, Enclosure of the Park with Pales, and one Pound of Cummin-Seed yearly to be paid for Rent; and that for Homage and Fealty, and three Years Rent arrear, the Defendant as Servant to the faid W. R. and by his Command, distrained the Goods, &c. the Plaintiff replied, that the faid House was held of W. W. as of his Manor of S. and traversed, that it was held of W. R. modo & forma, &c. upon which they were at Issue; and the Jury found that the House was held of the said W. R. as of his Manor of N. (which was not the Manor set forth in the Plea) by Homage, Ge. now though this Verdict did not agree with the Plea of the Defendant in the Manner of the Tenure; yet it agreed with it in Substance, for which the Taking was, Oc. (viz.) that the House was held of W.R. by Homage, &c. and that is sufficient to excuse the Defendant of the Trespais,

Trespass, though it had been otherwise in Replevin; because in such Case the Avowant must make out a Title to every Thing alledged in his Avowry, and by Consequence to all the Services, because if found for him, it will be a perpetual Charge on the Tenant; but in an Avowry for several Sums due for Rent, 'tis sufficient that the Substance is found, (viz.) that some Rent was due, and in a Arrear, though not so much as demanded. I Brownl. 212. Goodman verfus Ailing.

11. Upon the whole Matter, a Relief is not pro- 3 Rep. 66. a. perly a Service, but the Fruit of Services, and 'tis Cro. Eliz. as a Bloffom fallen; and therefore the Defendant 885.

need not avow for it upon any Person certain.

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## Steward.

## (A)

## See Lunatick. (A) 4.

I. T Ords of Manors, who have the Right of Ju- What he is, risdiction in their Lands, have likewise a &c. and what Right of chusing those who are to exercise the Of- Time be should fices of Judicature within their Limits, and they hold Court; of give them their Commissions, that is to say, the his refusing to Title to possess and execute the said Offices, and he keep Court, who hath this Title is called a Steward, in Latin and of bis Seneschallus, which ex vi termini should be an Offi- Misbebaviour. cer of Justice, for the Word is derived from Sen which some say, is an antient Word, signifying Justice, and Schale which signifies an Officer or Governor.

2. This Officer is described by Fleta in a most excellent Manner, (viz.) provideat sibi dominus de seneschallo circumspecto & fideli, viro provido & discreto, O gratiofo, humili, pudico, pacifico O modesto, qui in legibus consuetudinibusque provincia & officio seneschalschia se cognoscat, & jura Domini sui in omnibus teneri affectat; quique suballivos Domini in suis erroribus & ambiguis

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ambiguis sciat instruere & docere, egenis parcere, & qui nec prece vel pretio velit a tramite Justitie deviare, O perversa judicare, cujus officium est curias tenere maneriorum, & de substractionibus consuetudinum, serviciorum, reddituum de fectis ad curiam, de mercat, molendinis Domini & ad visum franci plegii aliarumque libertatum Domino pertinentium inquirat, Oc. 11b. 2. cap. 66.

3. Tis to be hoped, that though many of the Stewards of England may not come up to all the Adjectives of this Description, yet that most of them walk in tramite justitia; and never deviate

4. And because a Steward ought to be capable of

from thence either prece vel pretio.

instructing the Bailiff of the Manor, least he should commit any Mistakes, and to direct where he is doubtful; therefore it may be necessary here to shew how such Bailist is described by Fleta; (viz.) Ballivus autem cujuscung; manerii esse debet in verbo ve-\* Taking any rax O' in opere diligens O' fidelis, ac pro discreto \* appruatore cognitus plegiatus & Clericus, qui de communioribus legibus pro tanto officio sufficienter se cognoscat, & quod sit ita Justus quod ob vindictam seu cupiditatem non quarat versus tenentes Domini nec alios. Lib. 2.

cap. 67, 72, 73; 5. A Plaint being entered against the Defendant, he was fummoned to appear on fuch a Day; but the Steward came in the Afternoon, and after Sun was fet, and held the Court fo late, and the Summons being returned ferved, and the Defendant not appearing, there was Judgment against him; and it was held good; and so it would have been, if the Court had been held at Night; but if it had been contrary to Law, yet the Defendant hath no Remedy by a Writ of false Judgment, or otherwise, but only by a Petition to the Lord of the Manor, letting forth his Case; and then the Lord, who is

give Relief. Owen 63. 6. An Annuity was granted to W. R. for Life, for the Exercising the Office of Steward of the Manor of H. who brought a Writ of Annuity for the Arrears, and obtained Judgment; and afterwards he brought a Scire facias on that Judgment, Oc. to which

Chancellor in his Court, ought in Conscience to

Thing for the Use of the Lord.

which the Defendant pleaded, that pending the Writ of Annuity, the Plaintiff was required by the Defendant to keep a Court for the faid Manor, which he refused to do, and this was adjudged a good Plea. Dyer 377.

7. Upon a Motion for an Attachment against the Steward of a Court-Baron for splitting Actions, and so to bring them within the Jurisdiction of that Court, in order to obstruct the Proceedings for the same in the Courts of Common Law; a Prohibition was granted, and the Steward to stand committed till he answered upon Interrogatories concerning this Misdemeanor. Mich. 17 Car. Darcie's Case.

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8. He may set a Fine upon any Person in the What AEs he Court for a Contempt to himself; as for Instance; may do in he told the Desendant that he was a Suitor to the Court. Court which he then held, who replied, In saying Fines. So thou liest, for which he set a Fine of 20 s. upon him; and in an Action of Debt brought for this S. C. Fine, upon Nil debet pleaded, the Plaintist had a Verdict and Judgment; and upon a Motion to set it aside, it was adjudged, that the Action did lie, for this was an apparent Contempt, and an Abuse to the Steward as Judge of the Court-Leet, and that the Fine was well assessed by himself. Cro. Eliz. 581. Lincoln Earl versus Fisher.

9. So where a Constable was chose in the Leet, but Leet. (1)17. refusing to hold the Office, went out of Court, and S. C. was fined by the Steward for this Contempt; and adjudged good; for every Judge of Record may set a reasonable Fine for any Contempt or Disturbance to himself, or in the Court; and a Distress may be taken for such Fine without a Prescription so to do.

8 Rep. 38, in Greifley's Cafe.

10. Now though it is true that a Steward may fet a Fine in Court for a Contempt or Disturbance, yet he cannot amerce without a Prescription, because that is properly to be done by the Homage; therefore in Replevin the Desendant prescribed to distrain for all Amerciaments in the Manor, &c. and that the Plaintist being a Copyhold Tenant, was presented by the Homage for not repairing a Copyhold Tenement, for which the Steward amerced him

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10 s. it was adjudged that the Steward could not amerce without a Prescription. 1 Leon. 242. Blunt

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versus Whitacre.

11. And yet where in Trespass, &c. the Defendant pleaded, that the Queen was seised of the Manor of B. and that the Defendant was her Bailiff. and that it was presented by the Homage, that at a former Court the Plaintiff was amerced 10 s. by the Steward for surcharging the Common, which Amerciament was affeered, and for which the Diffress was taken: It was adjudged, that this Amerciament by the Steward was good, but the Distress was ill, because there was no Prescription laid to distrain for an Amerciament, Oc. Cro. Eliz. 748. Rowlstone versus Alman.

Entailing Cop. (A) 11. S. C. Surrender. (A)47. S. C.

12. He may take a Surrender to the Use of himfelf, and this shall be good in Law, because the Entry is, that A. B. did surrender in manus Domini, Ge. and the Steward is but the Servant of the Lord of the Manor. Cro. Eliz. 317. Irish versus Reeves.

Surrender out of Court to a Steward without a Patent.

\* See pl. 23.

13. Baron and Feme, Copyholders in Right of the Wife, they surrendered out of Court into the Hands of the Steward, who examined the Wife apart from the Husband; it was objected that this Surrender was not good, because it was not set forth that he was Steward by \* Patent, nor any Cufrom to warrant such Surrender; yet it was adjudged good. 2 Cro. 126. Smith on versus Gage.

14. The same Case is reported afterwards in the same Book, by the Name of Smithson versus Cage, and the same Judgment was given, (viz.) that a Steward, who hath no Patent for his Office may take a Surrender without any Custom for that Purpose, and the Admittance upon it shall be good.

2 Cro. 526. Smithfon versus Cage.

15. The same Point was adjudged in Duffeild and Andrew's Case, (viz.) that a Steward of a Copyhold Manor may, without a Custom to warrant it, take a Surrender out of Court, because the Lord of the Manor may do it, and he hath to this Purpole the † 2 Cro. 526. fame Authority as the Lord hath; and there is the fame Reason that he may take a Surrender + out of 1 Leon. 227. the Manor as out of the Court; for in some Cases it

S. P.

may be convenient and necessary so to do, and it cannot be prejudicial to any Body. 2 Salk. 184.

16. The same Point was before that Time deba-

Duffeild versus Andrews.

ted in Blagrave's Case, but not adjudged; it was on a special Verdict in Trespass, wherein the Case was, that L. R. was retained by the Lady of the Manor of B. to be her Steward to keep her Courts : and this was by Word only, and without any Fee or Annuity, and afterwards he took several Surrenders out of Court; the Question upon this special Verdict was, Whether fuch a Steward might take \* Surrenders out of Court, because the Retainer was by \* He cannot Word only: It was infifted that he was Steward at make Grants the Will of the Lady of the Manor, the Retainer or Admittanbeing by Word; and that he shall continue Steward ces at any till the determines her Will by discharging him; Court beld out and that such Retainer is good without Deed, and of the Manor. without any Fee for exercising his Office; because, Melwich and tho' a Fee is not expresly granted, yet he cannot be Luter's Cafe. compelled to execute the Office without a Fee.

Leon. 227. Blagrave versus Ward.

17. The King granted the Stewardship of a Ma- Deputy Stew-

nor to W. R. The Question was, Whether such ard. Steward could exercise that Office by Deputy, without an Authority given him by the Patent fo to do: Those who argued he could not, distinguished between an Office of Trust, wherein the Officer hath an Inheritance in fuch Office, and where he hath only an Interest for his Life; that in the one Case such Officer may make a Deputy without any Authority given in the Grant, because the Grantor put no Confidence in the Person of the Grantee; but in the other Case he cannot make a Deputy without such an Authority given to him by the Patent, because the Grantor made choice of him for his Skill in the Office, and reposed a Confidence in his Person; and certainly a Steward is an Officer of Trust, for he enters Plaints, and takes Surrenders of Copyhold Tenants; and though he is not a judicial Officer, yet he hath a ministerial Place; for both Lords of Manors and their Tenants repose a great Trust in him. 4 Leon. 243. Earl of Rusland versus Spencer.

18. Three

18. Three Offices were granted to the Earl of Shrewsbury by Letters Patents, of which one was the Office of Steward of the Manors of M. and B. but did not fay in what County, but notwithstanding that Omission it was held good: Then it was objected that the Earl had no Power to make a Deputy, because in the Grant of the first Office that Power was annexed to it; but in the Grant of the second Office, which was this Steward hip, there was no fuch Power given; and the Words in the Habendum, which fignifies an Office or Offices, are writ short and contracted thus, (viz.) Habendum Offic pradict; but adjudged that the Habendum Chall have Relation to this Office, which being an inferior Office, it shall be intended, that the Earl shall Deputy-Stew- execute it by a Deputy, tho no fuch Power is given to him in the Grant; for if a Sheriff may make a Deputy, a fortiori an Earl may do the like. 9 Rep. 46. The Earl of Shrewsbury's Cafe.

Helitone.

19. The Lord of a Manor granted the Office of Steward, &c. to L. R. to exercise the same by himfelf, vel per sufficientem deputatum suum; afterwards \* See pl. 21. this Steward made a Deputy \* pro hac vice to take a Surrender of a Copyhold Estate by Baron and Feme, to the Use of them for their Lives, Remainder over in Fee, & ulterius faciendum quantum in me est: Now in this Cafe the Deputy Steward had an absolute Authority to take the Surrender of the Hus-A Steward of Lives, which Authority he had not pursued; for a Manor may he took the Surrender from them to the Lord, upon depute another Condition, that he should regrant the Estate to them render of a Co- for their Lives, Remainder over: But adjudged pyholder tho he that this was a good Deputation pro hac Vice, and is in Ireland, that the Deputy had purfued his Authority by 4 Leon. 111. Reafon of these Words, & ulterius faciendum, Gc. Higger ver. Cro. Eliz 48. Burder's Cafe.

> 20. Grant of a Stewardship of a Manor to Two, afterwards one of them, without the other, granted a Copyhold; 'tis true, in Strictness of Law this could not be done; but yet it was held that this Grant of a Copyhold by one of them was good, because he had some Colour to hold a Court, and to summon the Copyholders to appear there; so where a

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Deputy-Steward holds a Court without any Disturbance by the Lord of a Manor, or by any other Person, though he hath no Grant, or any Deputation from the Steward himself to hold a Court, yet if he makes any Grants, &c. they are good, because the Tenants are to yield Obedience, and not to examine or enquire into the Authority of the Court-Keeper; neither is he bound by Law to give them any Account of his Authority. Moor 110.

Knowles versus Lucy. See I Leon. 218.

21. Grant of a Stewardship of a Manor to exer- Deputy of a cise the said Office by himself or his Deputy, &c. the Deputy. Steward appointed one Clerke to be his Deputy, who by a Writing under his Hand appointed T. S. to be his Deputy + pro hac Vice, to take a Surrender of a + See pl. 19. Copyhold of Inheritance from the Husband to the Use of his Wife for Life, Remainder to his Son Charles in Tail; and if the faid Charles died without Issue, and not of full Age, then to the Use of his faid Wife and her Heirs; the Deputy of the Deputy took this Surrender accordingly, and the Wife was admitted by the Lord of the Manor by the faid Deputy; and in Ejectment, this Case being stated in Manner as aforesaid, for the Opinion of the Court, it was adjudged, that a Deputy might do any Act which the Steward himself might or could do: and that this was effentially necessary to a Deputy, but that a Deputy could not make a Deputy, because the Making fuch Deputy is a strong Implication, that he hath affigned all his Power and Authority to him, and that is not affignable by Law; but tho a Deputy cannot make Such a Deputy, yet he may give Authority to another Person to do some particular Act; and what such Person doth in his own Name, by Virtue of fuch Authority, may be good: Tis true, if he had not been appointed by the Deputy to do some particular Act, in such Case, what he did in his own Name would be void, because he had no real Authority from the Deputy; but even in such Case he would have been in Reputation a Steward de facto, and what he doth as fuch, would have been sufficient amongst the Tenants of the Copyhold Tenements, because as they are not to examine his Authority, to he is under no Obligation

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gation to give them any Account by what Authority he acts. I Salk. 95. Parker versus Ket.

Retainer by Word.

\* Cro. Eliz.

22. My Lord Coke tells us in Down and Hopkin's Case, that it was said a Lord of a Manor might retain a Steward by Word, and fuch Retainer shall be good till his Discharge. 4 Rep. 29. in \* Down and

323. S. C. Hopkin's Cafe.

> 23. But he tells us in the same Book, that the same Point was resolved, (viz.) that a Lord of a Manor may retain one to be his Steward of his Manor by Word, and to hold Courts there; and in this last Case it was said, that it had been adjudged in the Lady Holcroft's Case, that where one is retained by

† Word generally to be a Steward of a Manor, and † A Steward to hold Courts, that he may take Surrenders of Cuwithout any flomary Tenants out of Court. 4 Rep. 30. Harris versus Patent, or without any 7 ay. Caftom to

warrant it, may take a Surrender, and the Admittance upon it is good. 2 Cro. 126. Smithson versus Gage. See pl. 13.

> 24. The like Point was adjudged in Dyer, (viz.) that a Steward of a Manor may be retained to keep Courts, &c. without a Deed, and that he may have an Action of Debt for his Salary, but he cannot have a Writ of Annuity, unless the Retainer had been by Deed. Dyer 284.

Cro. Eliz. 699.

Acts done by a Steward who kept Courts without any Authority, are good, if they come in by the Presentment of the Homage, or are of Necessity, as upon a Presentment, or upon an Admittance of the Surrendree to an Ule, for the Law favours such Acts done by one who hath a reputed Authority, and an inferior shall never inquire whether his Authority is lawful, or not.

Retainer by Deed, and Steward bip.

25. There was a Grant of a Stewardship of a Manor to the Father for Life, and afterwards to his Son Grants of Re. for Life; and a Rent was granted to him jointly out version, and of of the said Manor for exercising the said Office, which Rent was in Arrear, and then the Grantor died; and the Father who was Steward in Possesfion being dead, the Son distrained a Copyholder for the Rent arrear: Adjudged that this Diftress was good, but if the Plaintiff replevy, and the Defendant

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the 1 2 1 nera dant makes Conusance, he must shew in his Avowry, that he continued to exercise the Office of Steward; for if he neglects, or refuses so to do, then an Action of Debt only lies for the Arrears. Dyer 270.

26. There was a Grant of the Stewardship of a Manor to W. W. and afterwards the Bishop of Lincoln granted the same Office of Steward to W. R. for Life, to have and exercise the same after the Death of the first Grantee, which last Grant to W. R. was confirmed by the Dean and Chapter of Lincoln, and adjudged good. Dyer 80. Stanton versus Green.

27. And yet in the same Book there seems to be a contrary Judgment. If. A Grant of a Stewardship of a Manor to B. T. for Life, with a yearly Fee of 40 s. for exercifing the faid Office, afterwards the Grantor reciting the faid Grant for Life to B. T. did grant the Reversion of the Said Office to R. W. after the Death of the first Grantee, with a yearly Fee likewise of 40 s. for exercising the same; then B. T. the first Grantee died, and now R. W. who was the second Grantee, held Courts, and afterwards distrained for the Arrears of his Annuity of 40 s. and in Replevin avowed the Taking, Oc. in this Case it was adjudged, that the Grant made to him was void, \* The Law is \* because there can be no Reversion of the Office of a now otherwise.

Steward of a Court, and the Grant of a Fee of 40 s. was likewise void, because it was an Executory Recompence for exercising an Office, the Grant whereof was void. Dyer 259. Sir John Savage's Cafe.

28. Upon a Bill in the Dutchy-Court of Lancaster. the Question was, Whether the Lord of a Manor might grant the Office of Steward of his Manor to W. R. in Reversion; and adjudged that he might; 'tis T. Jones 126. plain he may grant it in Fee, and by Contequence for any less Estate, and therefore in Reversion, and the rather, because it may be executed by Deputy. 2 Med. 173. Sir Robert Howard versus Attorney General.

Surrender.

## Surrender.

#### (A)

Of Surrenders out of Court, and Surrenders by Attorney. (A)

Surrenders in Remainder, & in futuro, and to an Infant not born. (B)

Surrenders on Condition. (C)

Surrenders good, and what passes by them, and of Surrenders to Uses, and where no Uses are limited. (D)

Where good without any new Admittance; Time of a Surrender made, how to be tried, and of a Surrender by a Feme Covert. (E)
Surrenders to Uses of Last Wills. (F)

1 Inst. 59. 9 Rep. 75. I. E Very Copyholder may furrender in Court without any particular Custom for it, and so without Custom he may surrender out of Court to the Lord himself; but if it be into the Hands of the Lord by two Customary Tenants, this must be by Custom, and must be particularly pleaded.

2. Tis generally true, that Surrenders may be made by Attorney, yet in such Case the Lord may resust to admit him to whose Use the Surrender is made, because he ought to do Fealty, which must

be done in Person.

3. The Surrenderor continues Tenant till the Admittance of the Surrendree, and he cannot pass away the Land to any other, or subject it to any Incumbrance than what it was subject to at the Time of the Surrender; for if he afterwards surrender it to the Use of another, 'tis void, and a subsequent Admittance shall not make that good, which was void ab initio; and tho' the Surrender was made out of Court, yet the Surrenderor cannot dispose the Lands, or countermand his Surrender, if made upon a valuable Consideration, tho' he may do it if made for natural Love and Affection.

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4. A Surrender to be in Force at a Day to come, is void, as well as Livery and Seisin to take Effect

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5. In many Manors the Custom is, for a Copy- Of Surrenders holder to furrender his Estate out of Court into the out of Court, Hands of the Lord of the Manor, by two Copyholders and Surrenders Tenants of the Manor; now where there is fuch a by Attorney. Custom the Copyholder cannot surrender by Attorney. because every Surrender must be warranted by Custom; and a Surrender out of a Court, without a special \* 9 Rep. 45. Cultom fo to do, is not good. Chapman's Case ci- See pl. 6. ted in \* Comb's Cafe.

6. But the Case last mentioned differs from Comb's Case, for there the Surrender was by Actornies in Court. J. A Copyholder of Inheritance made tro Attornies where there was no Custom to warrant it. and this was to surrender his Copyhold to the Use of W. R. in Fee, who accordingly came into Court, and produced their Letter of Attorney, and made a Surrender accordingly; and it was reloved that this Surrender was good, because a Surrender might be made at Common Law, and without a Custom fo to do; and if fo, it may be made by an Actorney as incident to it; and if the Lord is willing, then the Admittance of the faid W. R. to whose Use such Surrender was made, may be likewise made by Attorney, because he may be fick or beyond Sea, and so not able to be present himself, in order to be admitted; and it might be inconvenient if he should not be thus admitted, because the Surrender might be made for the Advancement of his Children. or for the Payment of his Debts; and in this Cafe it was refolv'd that the Attornies had purfued their Authority, though they did not do it in the Name of him who made them Attornies; for they shewed their Letter of Attorney in Court to the Steward, and furrendered by Virtue thereof. 9 Rep. 75. Comb's Cale.

7. The Custom of a Manor was to surrender a Copyhold Estate out of Court into the Hands of two Customary Tenants of the Manor; and that the Surrender thall be prefented at the next Court, Oc. otherwise to be void; the imo Tenanis died before the next Court was held, and there was none held tor feveral Years after: It was adjudged, that nothing

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\* Godb. 268. S. C.

See I Mod.

12. S. C.

Of Surrenders passes from the Surrenderor, till the Surrender is out of Court, presented in Court; and that the Estate is still in him and his Heirs; and that if after the Death of renders by At the two Tenants who took the Surrender, the same had been presented at the next Court by any other of the Copyhold Tenants of the faid Manor, it had been good. \* 2 Cro. 403. Frafier versus Welch.

8. So where the Cultom was, for a Copyholder to surrender out of Court into the Hands of two Tenants of the Manor to the Use of another, Oc. and that at the next Court the Surrendree should be admitted; this Custom was found in a special Verdict in Ejectment; and that the Surrendree died before the next Court; it was objected that he could not be a Copyholder within this Custom, because he died before he was admitted, and so was never possessed of the Copyhold Estate; and in such Case it must descend to the Heir of the Surrenderor, who is well entitled by the Copy of his Ancestor the Surrenderor; but the better Opinion seemed to be, that the Surrender was good, and warranted by the Custom, especially if the Lord had accepted any Rent of the Surrendree before his Death, for that shall be a sufficient Admittance to entitle him to the Copyhold Estate. Stile 145. Barker verlus Denham.

(B) Surrender of Remainders. and of contingent Remainders, and in futuro, and to an Infant not born.

o. A Copyholder of Inheritance furrendered to W. R. for Life, and afterwards to the right Heirs of the Surrenderor; and not long after he made another Surrender of his Reversion to L. R. in Fee, and died; then W. R. the Tenant for Life died, and the right Heir of the Surrenderor entered: Adjudged, that after the first Surrender made, nothing remained in the Surrenderor, but the Reversion in Fee, expectant upon the Determination of the Estate for Life; and that if he had not made another Surrender of the Reversion to L. R. in Fec, his right Heir would have come in by Purchase, and not by Descent, and the Estate would have remained in the Lord of the Manor till the Surrenderor died; because then, and not before, his right Heir would be known; but that there is a Difference where a Surrender is made to the Use of a Stranger for Life, and where 'tis made

made to the Use of the Surrenderor himself, for Life, Remainder to another in Tail, Remainder to the right Heirs of the Surrenderor; for in the first Case his right Heir shall be in by Purchase; but in the last Case he shall be in by Descent. 1 Leon. 101. Allen versus Palmer.

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10. Adjudged, that where there is Tenant for Life See Admitof a Copyhold Estate, Remainder in Fee to W. R. tance. (A) 7.
that this Remainder-Man may surrender his Estate to S. P.
another, if there is no Custom to hinder him, because the Estate of the Tenant for Life, and of him in
Remainder, are but one Estate in Law; for \* the Ad- \* See pl. 43.
mittance of the Tenant for Life is the Admittance S. P.
of him in Remainder. 4 Leon. 9. Butler versus
Lightfoot.

the Use of T. S. in Fee: Adjudged this was no Discontinuance, but that the Heir in Tail might enter, for its no Discontinuance unless warranted by Custom. I Leon. 95. Moor Case 448, 813. Cro. Eliz.

148. pl. 17, 483. pl. 20.

12. The Husband seised of a Copyhold of Inhe-Poph. 39. ritance in Right of his Wise, surrendered to T. S. Moor Case who was admitted; then the Husband and Wise 813. died: Adjudged that the Heir might enter, for this Surrender made no Discontinuance; and a Disserted for Life, and an Estate of Inheritance; for the Estate for Life is drowned in the Lord by Surrender, but the Inheritance is transferred to him to whom its made.

13. There were two Coparceners in Possession of a Copyhold, the one surrendered the Reversion of her Moiety to W. R. after her Death: Adjudged that this Surrender was void. Godb. 451. Barker versus Taylor.

14. So a Surrender, made to two Tenants out of Cro. Eliz. Court, to the Use of W. R. after the Death of the Plat's Case. Surrenderor, is void, because this Use was not to S. P. commence immediately, but in futuro. March 175. Bambrigg versus Whitton.

15. Lease for Years made by a Copyholder pursu- Cro. Car. ant to the Custom, and reserving Rent; afterwards he Simpson's furrendered the Reversion together with the Rent, to Case. S. P.

Pl. 18. S. P.

the Use of W. R. who was thereupon admitted: Adjudged, that the Lessee for Years need not attorn, either to create a Privity between him and the Surrendree, or to settle the Reversion; because the Surrender of the Reversion, and the Admittance of the Surrendree were in Nature of an Attornment, 1 Leon, 207.

Raym. 18.

16. So where a Copyholder of Inheritance made a Leafe for Years, warranted by the Custom, and referving Rent, and afterwards furrendered the Reversion to L. R. and the Rent being arrear, the Surrendree of the Reversion distrained, and the Lessee brought a Replevin, and the Surrendree avowed, Oc. and set forth both the Lease and the Surrender in his Avowry, but did not alledge any Notice of the Sarrender or Attornment of the Lessee; and upon a Demurrer to this Avowry it was adjudged to be good, nithout any Notice or Attornment, because the Distress was a sufficient Notice of the Surrender; and the Estate passes by that, and by the Admittance of the Surrendree, which are publick Acts; and because the Surrendree hath no Means to compel an Attornment, therefore 'tis not necessary. 1 Lev. 40. Bluck versus Mole.

Pl. 15: S. P.

17. So where a Copyholder made a Leafe of his Copyhold Estate for twenty-one Years, with Leave of the Lord of the Manor so to do, and afterwards he surrendered the Reversion of a Moiety of his Estate to W. R. who was thereupon admitted: Adjudged, that this Surrender by the Name of his Reversion was good, and that the Astornment of the Lessee was not necessary, because this Estate passed by the Admittance of the Surrendree, and not by Way of Grant of the Reversion. Hob. 177. Swinnerson versus Miller.

W. Jones 342. S. C.

18. A Copyholder of Inheritance surrendered his Estate to the Use of his two Sons, and to the Survivor of them; and that if the eldest Son should die without Issue, then the Lands should remain to the youngest, &c. in which Surrender there was this Clause: Memorandum; This Surrender not to stand and be in Force until after my Death, which Clause is void in Law, because a Surrender ought

Postea pl. 22. Clause is void in Law, because a Surrender ought to take Place immediately, and not in surren; but

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it shall not make the Surrender it self void, because that was good and perfect in the Beginning, therefore this void Clause shall be rejected, as repugnant to the Premisses. Cro. Car. 367. Seagood versus Hone.

19. It hath been formerly adjudged, that where 2 Cro. 205. a Copyholder of Inheritance made a Leafe for S. C. Years, warranted by the Custom, &c. rendring Rent at certain Days, to him, or to his Heirs or Affigns, with a Clause of Re-entry if the Rent was behind, &c. and the Rent being in arrear, the Copyholder surrendered his Estate to W. R. in Fee. who was admitted; that in fuch Case he could not re-enter upon the Lessee for the Rent arrear, because he could not take Advantage of this Condition as an Affignee within the Equity of the Statute 32 H.8. because such Surrendree is in by the Custom of the Manor which doth not extend to collateral Things; besides there is no Privity between him and the Lessee. Yelv. 222. Beal versus Brasier.

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20. But the Case last mentioned hath been de- 4 Mod. 80. nied to be Law, and that it was never argued, but S. C. a hasty Resolution was made; for a Surrendree of a 3 Lev. 326. Reversion of a Copyhold is an Assignee, and he may S. C. bring an Action of Debt or Covenant against the Lessee, within the Equity of the Statute 32 H. 8. for that is a remedial Law, and the Lord of the Manor can have no Prejudice by construing such a \* Hob. 1798. \* Surrendree to be an Assignee. I Salk. 186. Glover was an extraorersus Cope.

21. A Copyholder of Inheritance took of the nion. Lord an Estate of the same Lands by Copy of Court-Roll, to the Use of himself for Life, Remainder to his Wise for Life, Remainder to his Son for Life: Adjudged in Ejectment, that this was not a Determination of his Inheritance in this Copyhold, because its no more than a Surrender to the Lord, to the Use of himself for Life, Remainder to his Wise and Son for their Lives, and the Reversion in Fee still continues in him; but it might have been otherwise, if he had accepted an Estate himself only for Life, without any Remainders over for Life. 1 Roll. Rep. 257. Southcot versus Adams.

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2 Cro. 376. S. C. 135, 253. S. C. Hill. 7 Jac. Rot. 679.

22. A Copyholder of Inheritance being fick. furrendered his Copyhold Lands into the Hands of 1 Roll. Rep. the Lord of the Manor, to the Use of an Infant then not born; and that if fuch Infant after born should die before full Age, or before Marriage, without Heirs, then to the Use of W. R. and his Heirs: The Child was afterwards born, and died within Age: Adjudged, that this Surrender was void, because the Use was to commence at a Day to come, and that the Remainder limited to W. R. was likewise void, because it was to begin upon a Condition precedent, (i. e.) upon the Death of the Infant dying after full Age, and unmarried, which did never happen. 1 Bulft. 273. Simpson versus Southern.

23. A Copyholder who was Tenant in Tail of a Copyhold, furrendered it to the Use of the Surrendree and his Heirs: Adjudged that this did not make a Discontinuance, but that the Issue in Tail might lawfully enter. I Leon. 95. Right versus

Footman.

Sec the Pleadings in this Cafe in the Appendix, Surrender, pl. 34.

24. Debt upon Bond, conditioned at the next Court to furrender a Messuage, Oc. to the Use of the Obligee and his Heirs, and to procure him to be admitted, &c. and that he should enjoy it without Interruption by the Defendant, or Lancelot Symonds, or any other Person claiming under them; the Defendant pleaded Performance, Ge. the Plaintiff replied, that before the Bond was given, the faid Meffunge was Copyhold, and demifable by Copy of Court-Roll, &c. and that at fuch a Court, the Lord granted this Messuage to one Patience Hussey for Life, Remainder to Lancelot Symonds and his Heirs; and that at fuch a Court the faid Lancelot furrendered his Remainder to the Use of the said \* Patience bad an Estate for Life, and after her Decease to the Use of the for Life before. faid Lancelot and Jane his Wife for their Lives, and the Life of the Survivor, then to the Use of the faid Lancelot and his Heirs, who were admitted accordingly, and fane survived and claimed for Life, &c. Upon a Demurrer to this Replication, it was objected that the Surrender to Patience for Life was void, because the had an Estate for Life before; and it to, then the Remainder limited to Lancelot and Jane is void, because it was a Remainder limited upon

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upon a void Estate in the Creation: But adjudged, that though the Estate limited to Patience was void, yet Lancelot and Fane took a joint Estate for their Lives, not by Way of Remainder, but by Way of immediate Settlement; this being in Case of a Copyhold, which would have been otherwise on a Conveyance at Common Law. 1 Saund. 148. Wade versus Bach.

25. A Copyholder furrendered his Customary Lands upon a Condition, and afterwards by Deed executed, he released this Condition; and this was adjudged good, tho it was in a Copyhold Cafe, because a Right or Condition cannot properly be determined otherwise than by Deed. 2 Cro. 36. Hall versus Shadbrook.

26. The Lord of a Manor granted a Copyhold of Surrenders on Inheritance to W. R. upon Condition that he Condition. should pay yearly, and every Year 20 s. to B. B. See pl. 25,26. during his Infancy, and 100 l. at his full Age. The Grantee of this Copyhold did not pay the 20 s. every Year, but made a Surrender of his Estate to L. R. and his Heirs, who was thereupon admitted by the Lord; and afterwards the faid B. B. attained his full Age, but the 100 l. was not paid: Whereupon the Lord entered for the Condition broken, and granted the Lands to the faid B. B. and adjudged that his Entry was lawful, notwithstanding that he had admitted 'L. R. upon the Surrender of W. R. by whom this Condition was broken; because the faid L. R. came in by the Surrender, and not by the Admittance of the Lord, for he is only an \* Instrument to convey the Lands be- \* Pl.30 S.P. ing Copyhold. Cro. Eliz. 582. Pay versus Brown.

27. Surrender of a Copyhold by the Father to the Use of his Son and his Heirs, upon Condition, that he should perform the Covenants in such an Indenture; upon this Surrender the Son was admitted, and afterwards he made a conditional Surrender to W. R. to be void upon the Payment of ten Pounds on a certain Day therein appointed for the Payment thereof; but the Son neither performed the Covenants, nor paid the Money; and thereupon the Father entered and died, so that this Copyhold K 3

## Surrenders on Condition.

pyhold Estate descended to the Son: Adjudged, that by the Entry of the Father, both these Surrenders were avoided, and by Consequence W. R. could not enter for the Breach of that conditional Surrender made by the Son. Cro. Eliz. 239. Simmons versus Lownds.

Cro. Car. 283. S. C. Yelv. 16. 3 Cro. 422.

28. A Copyholder of Inheritance furrendered out of Court into the Hands of two Tenants of the Manor, all his Copyhold Estate to the Use of the Surrendree and his Heirs, upon Condition to be void upon the Payment of 100 l. &c. to the Surrendree at a certain Day: but before that Day came, the Surrenderor made another Surrender of Part of the fame Lands to the Use of W. R. and his Heirs; afterwards he paid the faid 100 l. and then he made a third Surrender of the Lands to the Use of L. R. and his Heirs: These two last Surrenders were first presented, and W. R. was admitted into that Part of the Estate which was surrendered to him, and L. R. was admitted to the rest, and the first Surrender was never presented at all; it was insisted in a special Verdict in Ejectment, in which all this Matter was found, that the second Surrender made to W. R. of Part of the Lands, was not good, because by the first Surrender all the Estate was out of the Surrenderor, till he had performed the Condition, which not being performed when he made the fecond Surrender, it must therefore be void; for he had no Manner of Interest then to surrender, tho' he performed the Condition afterwards: But adjudged that nothing passed by the first Surrender till it should be presented in Court, and the Surrendree admitted; for the Surrender into the Hands of the two Customary Tenants was no more than the Commencement of the Estate of the Surrendree, which must be perfected by Admittance, so that till that was done, the Right of the Copyhold Estate still remained in the Surrenderor, which he might well transfer by a second Surrender to another Person. Cro. Car. 273. Burgoigne versus Spurling.

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29. One Lane being seised of a Copyhold in Fee, furrendered it to Dixon and his Wife for their Lives, Surrender Remainder to the Use of the Heirs of his own Body, good, and what on the Pody of his Wife to be begotten, Gc. After- posses by it and wards Dixon and his Wife were admitted to them of Surrenders and their Heirs, whereas the Surrender was only to to Uses, and them for their Lives; then Dixon surrendered his where no Uses Moiety to Lane, and his Wife in Fee, who were are limited. thereupon admitted to that Moiety, and afterwards 1 Roll. Rep. Lane surrendered it to the Use of one Davis and his 338, 438. Heirs, who was admitted; then the Wife of Lane died leaving Issue, and afterwards he died: Adjudged, that the Limitation to the Heirs of the Body of Lane, on the Body of his Wife to be gotten, was a contingent Remainder, it being in the Case of a Copyhold, and not an Estate-tail executed in the Wife; and if so, then Lane her Husband having only a Possibility to the Reversion, his Surrender to Davis in Fee had extinguished that Possibility. 1 Roll. Rep. 317. Lane vertus Pannell.

30 Copyholder in Fee furrendered to the Lord without mentioning to whose Use; and at the next Court he himself and his Wife were admitted, to have and to hold to him and his Wife in Tail, Remainder to his own right Heirs; now though no Use was limited in this Surrender, yet the Copyholder being in before he made the Surrender, and afterwards accepting a new Admittance, the Law intends that the Surrender was made to the Use mentioned in the Admittance, because the Surrender was made to the Lord, who is only an \* Instrument to con- \* Pl. 26. S. P. vey the Estate to the Surrendree; and though the Wife was not named in the Surrender, but only in the Admittance, yet this being in a Copyhold Cafe the shall take an Estate; for tis like a Will where an Estate shall pass by the Habendum, though the Party is not named in the Premisses. Poph. 125. Brooke's Cafe.

31. W. R. a Copyholder furrendered his Copyhold Estate to the Use of the Surrendree for ever, and he was admitted, habendum to him and his Heirs; it was a Queltion, Whether this Admittance was pursuant to the Surrender; it was agreed, that if

† Cro. Eliz. Patshall's Cafe. Jones 141.

S. C.

the Surrender had been to the Use of his Will, and afterwards he had devised the Estate to W. B. for ever, and the Admittance had been to him and his Heirs, it had been good. Godb. 137. + Allen verius Patsball. 32. Sir Peter Vanlore being seised in Fee of the

Manor of Tilehurst, had Issue three Daughters, Fa-

coba, Susanna and Mary, and at such a Court held in and for the faid Manor, he granted the Lands in Te cal

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Question, being Copyhold, to Henry Zinzan, who was the Husband of his Daughter Jacoba, habendum to him, and to Henry and Peter Zinzan his Sons, for their Lives successively, as they were

by Surrender.

named in the Copy of Court-Roll, and Henry the Father was admitted, &c. then Sir Peter Vanlore died without Issue Male, so that his said Manor descended to his three Daughters as Coparceners; \* It should be and they and their Husbands levied a \* Fine thereof to the Use of the said Henry and Jacoba his Wife, for their Lives, &c. Remainder to such Person as 74coba by her Last Will should appoint, and for Want of fuch Appointment, to her own right Heirs; then Henry her Husband died, and Facoba by Lease and Release conveyed the Manor and Lands in Question to Frances and Jane, and their Heirs, who entered upon H. Zinzan the Son, who was the fecond Tenant for Life in the Copy; and he re-entered upon them, and made a Lease to the Plaintiff, who had Judgment in Ejectment in the Common Pleas, which was now affirmed in Error in B. R. because the Fine and Deed was no Surrender of this Copyhold, so as to bar Henry the Son, for a Copyhold must pass by Surrender. Raym. 402. Zinzan verius Talmage,

See Baspole & Long's Cafe.

> 33. A Copyholder bargained and fold his Copyhold Lands to the Lord of the Manor; this was adjudged a good Surrender of his Copyhold Estate, though the Lord was only Dominus pro tempore.

Winch. 67. S. C. V. Jones 41. C.

34. So if he comes into Court, and tells the Steward that he is meary of his Copyhold, and desires that the Lord of the Manor may take it, this is likewife a good Surrender, because 'tis not requisite that a Conveyance should be made between Lord and Tenant, Tenant, pursuant to the Custom of the Manor, because a Copyholder hath no other Benefit of the Custom but to convey his Estate to a Stranger, and that must be by Surrender. Hutt. 65. Blennerhasset versus Humberstone.

35. There were several Copyhold Lands used with and belonging to a Message; the Owner of the said Copyhold surrendered to the Lord the said Copyhold Message cum persinentiis: Adjudged, that the Lands did not pass by this Surrender, and Admittance of the Surrendere, but only the Message, Yards, Orchards, Gardens, &c. 2 Cro. 526. Simp-

Son versus Cage.

36. A Copyholder for Life surrendered his Estate generally to W. R. who was thereupon admitted for Lise, and afterwards died in the Lise-time of the Surrenderor: Adjudged, that he should not have his Copyhold again, because after he had surrendered, and the other was admitted, nothing remains 205. S. C. in the Surrenderor; but if a Copyholder of Inheritance W. Jones surrender to the Use of another for Lise, who is 229. S. C. admitted, and afterwards dies in the Lise-time of the 1 Mod. 200. Surrenderor, he shall have his Estate again. Cro. S. C. Car. 148. King versus Loder.

37. Tenant for Life of a Copyhold, Remainder for Life, he in Remainder, &c. entered on the Tenant for Life in Possession, and made a Surrender to W. R. &c. Adjudged, that nothing passed by this Surrender, because he was a Disseisor by such Entry, and had no Right or Customary Estate in him which he might surrender. 1 Mod. 199. Bird

versus Kirke.

38. The second Resolution in Bunting's Case is, that where a Copyholder surrenders to the Lord of the Manor to the Use of his Wise and youngest Son, without limiting any Estate; in such Case they have an Estate only for Life; for the Estates, as well as Descents of Copyholders, shall be directed by the Rules of Common Law, as necessary Consequents on the Custom, unless there is a special Custom of the Manor to the contrary; as that a Surrender or Devise shi & suis, or shi & assignatis, shall make an Inheritance; and Estates limited on Surrenders, are always annexed to the Estate of the

Surrendree, and the Surrender is made to the Lord in general, without limiting any Estate. 4 Rep. 29.

in Bunting and Lepenwell's Cafe.

39. A Surrender was made to the Use of the second Son of B. for Life, after the Death of the Tenant in Possession, and his Heirs: Adjudged that the Tenant had not a Fee-simple by Implication in the Copyhold Lands, by these Words; for tho it might be so in a Will, 'tis otherwise in a Surrender; for where the Lord admits in another Manner than appointed by the Surrender, 'tis void. I Brownl.

127 Allen versus Nalh.

40. A Copyholder of Inheritance surrendered it to the Use of himself for Life, Remainder to his Son Valentine and Alice his Wife, for their Lives, and for the Life of the Survivor, and to their Heirs and Assigns; and for Default of such Issue, to the Use of the Surrenderor and his Heirs: Adjudged that Valentine and Alice had a Fee simple, and not an Estatetail, because the Words in Default of such Issue, do not necessarily intend a Dying without Issue; neither do they import of what Bodies such Issue shall proceed, and every Heir is the Islue of some Body; therefore the express Estate limited to Valentine and Alice, their Heirs and Assigns, being a Fee simple, shall not be turned into an Estate tail by Implication, by Virtue of these Words in Default of such Is for the Limitations of Uses in the Surrender of a Copyhold, must be construed by the same Rules as Limitations of Uses in a Conveyance at Common Law, which are tied up to fet Forms and Words, and not to be confirmed upon imaginary Intentions of the Parties, as in Wills; and the rather in the principal Case, because of the Word Affigns, for an Estate-tail is not assignable. 2 Salk. 621. Idle verfus Cook.

41. A Copyholder of Inheritance borrowed Money, and for securing the Repayment thereof, surrendered his Copyhold by Way of Mortgage, to the Use of the Mortgagee and his Heirs; this Surrender was not presented at the next Court, as it ought, for which Reason it was void, and the Copyholder became a Bankrupt before any Presentment was made, and the Commissioners assigned the Estate

See Cro. Eliz. 478. 7 Rep. 41. Lit. Rep. 344. Cro. Car. 363. to

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to the Creditors; now though this Surrender was void, yet the Assignee of the Commissioners shall be in no better Condition than the Bankrupt himfelf would have been, if no Statute had been taken out against him; for even upon a defective Surrender, his Estate is bound in Equity; therefore in this Case, per Somers Lord Chancellor, he shall be a Trustee for the Mortgagee. 2 Salk. 449. Tailour versus Wheeler.

A Copyholder having borrowed Money, agreed to furrender his Copyhold to fecure the Repayment thereof, but died before he made any Surrender; decreed, that his Son, an Infant, shall furrender when he comes of Age. Chan. Cases 272. Patteson versus Thompson. Chan. Cases 331. Keen versus Spar-

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42. The Grandfather being feised of Copyhold Lands, devised the same to his Grandson; and upon a Bill in Equity brought by the faid Grandton, Somers Lord Chancellor decreed, that the Copyhold passed by this Will, and that a Court of Equity ought to supply a Surrender in the Case of a Grand-Jon, as well as it doth in the Case of an Heir at Law; but this Decree was reversed in the House of Peers, upon an Appeal brought there, who would not allow Equity to supply such a plain Defect, unless it was in Favour of an Heir at Law. 1 Salk. 187. Kettle verius Townsend.

43. The Plaintiff was a Copyholder of Inheritance; and the Lord of the Manor alledging that the Copyhold was forfeited, it was agreed between them, that the Plaintiff upon Payment of 5 1. to the Lord, (which he paid) should enjoy the said Copyhold for his Life, and that his Wife should have her Free Bench, and that it should be at his Choice, Whether such Assurance should be made by Deed or by Copy of Court-Roll; and he chose by Deed (excepting one Acre which the Lord enjoyed): Adjudged this was a good Surrender of his Lands for Life on-1 Leon. 191. Coleman versus Sir Hugh Portman.

A Copyholder furrender'd to the Use of T. S. the Cro. Eliz. Lord, without any reasonable Cause, resused to ad- 349. mit him: Adjudged that he cannot enter before Admittance, because the Surrenderor was still in Possession.

# Surrender, good without a new Admittance.

Possession, and not the Lord; and such Surrenderor may maintain an Action of Trespass against any who enters.

(E) Surrender, where good without a new Admittance; Time of Surrender made, bow to be tried; and of a Surrender by a Feme Co- fus Helftone.

\* See pl. 6.

44. The Husband furrendered his Copyhold Estate to the Use of his Wife for Life, Remainder to the Use of his Daughter and her Heirs; the Husband died, the Wife was admitted and died : Adjudged, that the Daughter might furrender these Lands without any new Admittance, because the Admittance of her Mother, who was the Tenant for Life, was the \* Admittance of her Daughter in Remainder. 4 Leon. 111. Higger ver-

45. There were two Joint Copyholders, one of them gave the other a Release of all his Right; this is good without any Surrender by the Releafor, or Admittance of the Releasee, because the Joint Copyholders were both admitted, and their Ability to release did arise originally from the Time that they, and each of them were admitted. Winch 3. Wase

versus Petty. 46. Adjudged, that the Entry of the Day when the Court was held is no Matter of Record; for if the Issue should be taken upon the Time when the Court was kept, or at what Time the Surrender was made; this shall be tried by a Jury, and not by the Court-Rolls. 4 Leon. 215.

Entailing Co-12. S. C.

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153. S. C.

2 Mod. 287.

47. Tis generally held that a Surrender made by a pyhold.(A)11. Feme Covert being examined alone, either by the Lord of the Manor, or his Steward, is good, and Steward. (A) shall bind her by the Custom of the Manor; and if the furrender out of Court into the Hands of two Customary Tenants, who likewise examine her alone; this may likewise be good, but not without a special Custom to warrant such Surrender. Cro. Eliz. 717. in Erifh and Reeve's Cafe.

48. In Ejectment the Case was, Copyholder in Reversion for Life, at a Court held in the Name of a Diffeisor, (Lord of the Manor,) furrendered the Reversion into the Hands of the Differior, to his own Use; afterwards the rightful Lord entered and avoided the Diffeisin; then the Tenant for Life of the Copyhold in Possession died; and now he in

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Reversion for Life, who had surrendered his Reverfion as aforefaid, brought an Ejectment, and had Judgment in the C. B. that notwithstanding his Surrender made as aforesaid, he had a good Title; and upon a Writ of Error brought, it was infifted to reverse the Judgment, that the Surrender to the Lord of the Manor (who was so by Disseisin) and to his own Use, was good; for if a Copyholder may furrender to a Diffeisor (Lord of a Manor) to \* This he may the Use of any \* third Person, by the same Reafon he may furrender to the Use of the Disseisor him- Lord is only an felf: But adjudged that he could not, because the Infirument; Copyholder for Life in Reversion had no Estate which and the Estate he was capable to furrender; for the other Copy- is gill in the holder for Life being still in Possession, there could be Surrenderor no Disseisin of his Lands; and if no Disseisin, then till the Admitthe Reversion still continues in the rightful Lord. tance of the I Vent. 359. Moor versus Pitt.

do, because the Surrendree.

49. The Husband devised his Copyhold Lands to his Wife for her Life, and that the should sell the to the Uses of Reversion for the Payment of his Debts; and some Wills. Time after the making his Will, he furrendered his Husband and faid Copyhold in Court to the Use of his Wife, Wife. (A) 10. and died: Adjudged that the Widow might make S. C. a good Title to the Purchaser of the Reversion, for upon Payment of the Purchase-Money, he shall be \* Mich. 29 in under the Will. \* Cro. Eliz. 68. Bright versus Eliz. Hubbard.

(F)

Of Surrender

50. Devise of Part of his Copyhold Lands to his Wife for Life, Remainder to his Brother and his Heirs; and afterwards the Teffator, in the Presence of three Customary Tenants of the said Manor. declared, that he had made his Will, and appointed all Things therein as he would have it; and then he faid, now I here surrender all my Copyhold Lands into your Hands accordingly: Adjudged that this Surrender of all his Copyhold Lands shall not enlarge the Estate of the Wife to whom only a Part was devifed; for by fuch Devise of Part these general Words are restrained. 3 Leon. 18.

I Lcon. S. P.

51. The Lady of a Manor granted Part of it, being antient Copyhold to W. R. and his Heirs; and

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afterwards the granted the Inheritance of the fame Copyhold to W. W. the first Grantee surrendered to the Use of his Will, and afterwards devised the faid Copyhold to the Plaintiff and his Heirs; the Defendant, who was Son and Heir of W. R. the first Grantee, set forth the Grant made to his Father, by Virtue whereof he was feised, Ge. and died feised, and that the Lands descended to him: Adjudged, that by the Severance of the Inheritance of this Copyhold from the Manor, it was not destroyed, because the Estate of the Copyholder was established by Custom; and if so, then it descended to the Son as Heir to his Father; for his Surrender to the Use of his Will (after the Copyhold was severed from the Manor) was void; and the Will alone without a Surrender could not pals a Copyhold Estate. 4 Rep. 24. Murrel versus Smith.

52. Where a Copyholder furrenders to the Use of his Will, and afterwards devises the Land to W. R. and dies, in such Case the Lands do not pass by the Will, but by the Surrender; for the Will is only a Declaration of the Uses of the Surrender.

1 Bulft. 200. Semain's Cafe.

53. The Husband surrendered his Copyhold to the Use of his Will, which he afterwards devised to his Wise; and if she should have any Issue by him, then to such Issue at the Age of twenty-one Years; and if he had no Issue by her, then she to choose two Attornies, and they to sell the Lands to her best Advantage: Adjudged that by this Devise she had an Authority to chuse two Attornies to sell, &c. and that accordingly they might sell the Lands, and that the Purchaser shall be in by the Will without any new Surrender. 2 Cro. 199. Brent versus Sheppard.

The Plaintiff having enjoyed a Copyhold forty Years under a Will, being admitted at the next Court after the Will made, exhibited his Bill to have the Defect of a Surrender to the Use of the Will supplied, such Surrender being not to be found; and for that the Desendant had brought

I Vern. 195. Lyford ver. Coward. a \* Writ of Aiel in the Court-Baron, it was sug- \* This is a gested in the Bill, that it was not proper in that Writ which Court, because of the Difficulty of Trying such an lies where the Action; but decreed, that the Want of a Surren-Grandsather der shall be supplied, which might be lost by the was seised on Negligence of the Lord or his Steward, without the Day of his the Default of the Party.

Death, and a Stranger en-

ters the same Day and dispossesses the Heir, in which Writ the Plaintiff may declare of the Seisin of his Ancestor at any Time within fifty Years.

Copyhold to the Use of his Will, and then devised his see the Plead-Copyhold to the Use of his Will, and then devised his ings in this Freehold and Copyhold Estate to his next Heir at Case in the Lam, and to his and her Heirs for ever; provided Appendix, such Heirs at Lam well and truly pay the Sum of One Pl. 25. hundred Pounds within six Months after the Decease of his Wise, as she shall direct and appoint by her Will; and that his Land should stand chargeable with the Payment thereof.

In a special Verdict in Ejectment the Jury sound, that John Smith was the next Heir of the Testator, as being the only Son of Joanna, his only Daughter, married to Andrew Smith; and that the said John Smith was dead without Issue, and that the Desendant Francis Smith, was Cousin and Heir of the said John Smith on his Father's Side, (viz.) Brother and Heir of Andrew Smith, who was the Father of John Smith, and that Martha Joyner and Mary Cason were his next Heirs on the Mother's Side, (viz.) the Daughters of Walter Smithson, who was the only Brother of John Smithson the Testator.

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The Question upon this special Verdict was, Whether John Smith the Grandson and Heir at Law of John Smithson the Testator took these Lands by Descent, or by the Will as a Purchaser; for if he took by Purchase, then Francis Smith the Desendant is his Uncle and Heir; but if by Descent, then Martha and Mary the Lessors of the Plaintiss are his Heirs.

Those who argued for the Plaintiffs, insisted, that this Devise was neither a Limitation or Condition; not the one, because there was no Devise over; nor the other, because it was a Devise to the Heir

See the Cafes of Hainfworth ver. Petty, Pell ver. Brown, Wellock ver. Hamond, Couden ver. Clerk, Preiton ver. Holmes.

at Law, and by Consequence, if it had been a Condition, it had been void; because if it should be broken, there was no Body to take Advantage of fuch Breach, and therefore the Payment of the 100 l. is only a Charge in Equity on these Lands, and makes no Alteration as to the Descent: On the other Side, it was argued, that Admitting the Payment of this 100 l. was only an equitable Charge on the Land, and for which no Relief could be had but in a Court of Equity; yet it made a vast Alteration as to the Estate in the Lands themselves; for where a Man takes an Estate by Descent, he hath a clear, free and absolute Estate, by the Disposition of the Law it felf; but in the principal Cafe, the Heir takes it with a Charge by the Disposition of the Owner; which Charge or Clog thus transmitted to him is fo permanent, that it will adhere to the Estate in whosoever Hands it shall happen to come, till that Charge is satisfied: And Gilpin's Case, Cro. Car. 115. and 2 Mod. 286. Bretton versus Charnock, are, that where an Heir takes by a Devise with a Charge, he doth not take by Descent, but by Purchafe.

But adjudged, that the Proviso in this Will, for the Payment of 100 l. was only a Charge on the Land it felf in Equity, and made no Alteration of the Estate in the Land; and where that is not altered, the Descent must still continue; and in all executory Devises the Estate descends till the Contingencies happen; and as to the Law in this Case, see 2 Jones 25. the Case of Pitt versus Pelham, which is in Point. 1 Lutw. 797. Clerk ver-

lus Smith.

1 Vern. 132. Hardham

55. The Testator having by his Will provided for his younger Children out of Copyhold Lands, ver. Roberts. but the Surrender being made into the Hands of one Cultomary Tenant, when by the Custom it ought to be into the Hands of two fuch Tenants: The Question was, Whether this Defect should be supplied in Equity against the Heir; and it was decreed that it should; for the Chancery will supply a defective Surrender in the Behalf of \* Children or Creditors, where Copyhold Lands are charged for Payment of Debts.

\* But not of a Brother.

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\$6. One Allison being seised of a Copyhold Estate, and having no Issue, but had a Nephew and two Nieces, and intending to give his Estate to his Nephew; but being fuddenly taken with an Illness, had no Time to surrender to the Use of his Will, so that the Estate would descend to his Sister, who was his Heir at Law, and Mother to his faid Nephew and Nieces; he (before he died) procured his faid Sifter to enter into a Bond of 2000 l. to her Son and his Nephew, that she would at any Time at his (the Son's) Request, convey the faid Copyhold Estate to him, and soon after he died; after whose Death the Nephew entered, but without any Conveyance from the Mother, and enjoyed the Estate for some Years, and then he died without Issue; and after his Death the eldest Sister entered, who had Issue a Daughter, who died, leaving Issue a Daughter; and then the said eldest Sifter furrendered the whole Estate to the Use of her Will, and devised the same to her said Grandaughter and died; against whom the surviving Sister, and Aunt to the said Grandaughter, exhibited a Bill to have a Moiety of this Estate, in Coparcenary with her Niece as Heir to her Brother; for that his Mother shall be deemed only as a Trustee for him, especially since she had executed the Agreement made with her Brother Allifon, by permitting her Son to enjoy the Estate during his Life, tho' she was Heir at Law to him.

And this feems to be a stronger Case, than where the Father being about to make a Will, and his Wise Executrix; his Son desired him that he might be made Executor, because it might give him Credit in the World, but that his Mother should still have the Benefit of it; and accordingly being made Executor, he after the Death of his Father insisted on the Benefit of the Executorship, but it was set aside by the Lord Chanceller Comper, on Proof of the Promise, though nothing was in Writing between them; as in the principal Case nothing was in Writing between the Mother and the Son.

The Lord Chancellor Macklesfield decreed, that the Mother was a Trustee for her Son, and that the Plain-

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## Surrender to the Ales of Wills.

Plaintiff was entitled to a Moiety, and therefore that the Defendant should surrender to the Use of herfelf and the Plaintiff, and that they should be admitted as Coparceners. Mich. Term. 1725. 10

Georgii.

58. In Fitch and Huckley's Case it was resolved. that where a Man furrenders his Copyhold to the Use of himself for Life, and afterwards to the Use of his Last Will; that in such Case the Feefimple remains in the Copyholder, and not in the Lord. 4 Rep. 23.

1 Vern. 69. Brent versus Beft.

59. One Combes being seised of Copyhold Lands, and having borrowed Money on them, and fecured the Repayment thereof by a Mortgage; he afterwards furrendered them to the Use of his Last Will. which he need not to have done, because having only an Equity of Redemption, he might have deviled them without the Formality of a Surrender.

Chan. Rep. 75.

60. Decreed, that a Devise of a Charity was good, tho' it was of a Copyhold Estate, and not furrendered to the Use of the Will, for 'tis a good Appointment within the Statutes of Charitable Uses.

Chan. Cafes 254. Brend

61. The Father being feised of Freehold and Copyhold Lands, fettled the fame upon the Marriage Brend versus of his second Son to him for Life, and then to his intended Wife for Life, Remainder to the Issue Male of their two Bodies, and covenanted to furrender his Copyhold Lands to those Uses, but instead thereof the Surrender was entered on the Roll to the Use of the Heirs General; this Surrender was vacated by a Decree, and a new Surrender was directed to be made according to the Settlement.

#### A laborated known of the beautiful and the state of the s Trees growing on Copyholds. warming mining committee

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## bar were sent to a A A A Manga were my

HE Custom of a Manor was, that a Copy- bolder for Life holder for Life might name his Successor: commits a For-Adjudged this was such a Privilege, that if the feiture by fel-Copyholder cut down Trees it was no Forfeiture, be- ling Undercause he had a greater Estate in the Copyhold wood and Lands, than an Estate for Life. 1 Brownl. 132. \* Rolls not. versus Mason.

2. The Lord of a Manor made a Feoffment there- (A) 2. S. C. of to the Use of himself and his Wife, &c. and to his Heirs; there was a Custom in this Manor for cutting Underwood at twenty-one Years Growth; the Husband suffered the Woods to grow twenty-five Years. during the Coverture, and then died: Adjudged, that the Wife being Tenant for Life, could not cut these Woods without committing Waste, because the Time of cutting them was limited by the Cufrom to twenty-one Years, and that being past, and four Years more, the cannot cut till another twentyone Years come. Godb. 6.

3. The Lords of the Manor of B. for the Time 4 Rep. 30. being, had granted Underwoods growing there Time S. C. out of Mind by Copy of Court-Roll, and W. R. Moor 315, Lord of the faid Manor, granted the Underwood 355. S. C. there growing from Time to Time to the Plaintiff and his Heirs by Copy of Court-Roll; and that he or they might yearly, and every Year cut down four Acres thereof; and in an Action of Trespass brought by the Plaintiff, the Question was, Whether Underwood could be granted by Copy of Court-Roll, when the Soil it felf, upon which it did grow, was not granted: Adjudged, that it might be so granted, because Underwood is a Thing of Inberitance and Perpetuity; for after 'tis cut it will fpring out and grow again; and therefore it may well by Custom be granted to the Plaintiff and his Heirs. Cro. Eliz. 413. Hoe versus Tayler.

Where a Copy-

Customs.

# Trees arowing on Coppholds.

r Bulft. 50. S. P. Cro. Car. 160, 220. Rockey ver. Higgins. S.P. W. Jones 245. S. C Moor 456. S. C. \* See pl. II.

S. P.

4. The Custom of a Manor was, that every Copyhold Tenant for Life might fell Timber-Trees: Adjudged no good Cultom, but it might have been otherwise, where there are Copyholders of Inheri-

tance. Hob. 6, 11. Brook versus Spencer.

5. But where the Custom of a Manor was, that the Copyholders might lop the Pollards growing on their Copyhold Lands \* pro ligno combustibili; this was held to be a reasonable Custom, and in such Case, if the Lord of the Manor cut them all down. the Copyholder may have an Action on the Case against him. Cro. Eliz. 629. Stebbing versus Grofvenor.

6. The Custom of a Manor was, that a Copybolder for Life could not fell Trees, the Lord of the faid Manor granted a Copyhold to two Successively for their Lives, and the longer Liver of them; he who was the first named in the Copy, and was in Poffession, felled Timber-Trees: Adjudged, this was not only a Forseiture of his own Estate for Life, but likewise of the Estate for Life of him in Remainder; the Law is the same, if a Stranger cut down Trees, or a Tenant at Sufferance. Moor 49.

7. It hath been formerly adjudged, that a Tenant by Copy of Court-Roll, could not by the Common Law take Trees growing on his Copyhold Lands, either for Honfe-boot, Hedge-boot, or Cartboot; but that if he should fell them for either of the Purposes, there must be a special Custom of the Manor to warrant it. Cro. Eliz. 5. Lord Mountague versus Sheppard.

8. But the later Judgments are otherwise, (viz.) that a Copyholder may of common Right fell Trees for either of these Purposes, without any Custom to warrant it; 'tis true, his Power to take them may be restrained by Custom, (viz.) that he shall not tell them without the Assignment of the Lord of the Manor, or his Steward, Oc. 13 Rep. 68. Godb. 172.

S. P. 2 Brownl. 329.

9. And that Case between the Lord Mountague and Sheppard in Cro. Eliz. 5. was denied by the Lord Chief Justice Holt to be Law in Ashmead and Ranger's Cafe, though that Cafe was adjudged upon another Point.

This Cafe denied to be Law. pl. 9.

See pl 7. S. C.

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10. J. A Copyholder for Life demised his Copyhold Lands to W. R. for a Term of Years, and W. W. entered on the Lands, and cut down Trees; the Leffee brought an Action of Trespass against him, who justified the Entering and the Felling the Trees, as Servant to the Lord of the Manor, and by his Command, &c. the Lessee replied, that the Copyholder who demised the Lands to him, was Tenant for Life of the Copyhold, and that his House was out of Repair, and that all the Trees growing on his Copyhold Lands, were not sufficient to put the said House in Repair, &c. and upon a Demurrer to this Replication it was adjudged in B. R. that the Copyholder was Tenant of the Trees, as well as of the Lands on which they did grow; that the Fruit and the Acorns did justly belong to him, and that the Plaintiff who was his Leffee might maintain this Action of Trespass upon his possessory Right; which Judgment was affirmed on a Writ of Error in the Exchequer Chamber; 'tis true, it was reverfed in the House of Peers, because a Copyholder for Life cannot fell Timber-Trees, and if the Lord of the Manor cannot, then they must rot. 2 Salk. 368. Albimead versus Ranger.

11. The Custom of a Manor was, that the Copyholders might take Wood for House-boot, Hedgeboot, and \* pro ligno combustibili in Tenementis; and \* See Stebthat sufficient Wood was not lest on the Tenement bing versus for House-boot; whereupon the Copyholder cut Grosvenor. down one Oak, and the Lord of the Manor carried 2 Brownl. it away. In this Case it was adjudged, that Trees 229 S.C. growing on Copyhold Lands, do of common Right 2 Bulft. 281. belong to the Copyholders, in order to repair their Stephens. Houses; and that they may cut them down for that s p. Purpose without alledging any Custom so to do; and Antea pl. 5. that the Lord of the Manor must leave sufficient Timber-Trees on the Copyhold Lands to repair, &c. unless there is a special Custom for him to fell all: And that if the Copyholders have usually cut down Trees for Repairs, and the Lord of the Manor carries them away; in such Case the Copyholder may have an Action of Treipass against him; and that a Prescription to take Wood + pro + See pl. 5. ligno combustibili is good. Godb. 173. Heydon versus S. P.

12. But

Smith.

2 Cro. 29. Powel ver. Peacock. Noy 2. S.P.

12. But in the following Case there was a contrary Judgment. J. In Trover, the Question was, Whether a Copyholder for Life might prescribe to cut down Timber-Trees growing on his Copyhold Lands; and it was adjudged he could not, and that the Prescription was void because against Reafon, but that by Way of Usage for repairing his Copybold Buildings, he might cut down Timber-Trees, The Earl of Northumberland versus Wheeler. 1 Bulft. 153.

1 Brownl. 231, 311. S. C. Moor 811. S. C.

had been for Life it bad

13. The Custom of a Manor was, that a Copyholder for Life might cut down Trees growing on his Copyhold Lands to repair his Buildings; the King being Lord of this Manor made a Leate there-

\* If the Lease of to W. R. for so many \* Years, excepting the Trees; and afterwards the Leffee of this Manor granted a Copyhold to W. W. for Life, who cut down Trees been otherwise. then growing on the Copyhold to repair, Oc. And adjudged, that he might lawfully fo do, because the Estate of the Copyholder is not derived out of the Estate of the Lord, for he is in by the Custom, which is paramount both this Lease and Exception, and the lord is no more than an Instrument to make the Grant. 8 Rep. 63. Swaine's Case.

14. In a special Verdict in Ejectment, the Case

Cro. Eliz. 292,498. S.C. Roll. Abr. Tit. Copybold. (E) 18.

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Forfeiture, or

was, f. The Lord of the Manor of Quarenden in Bucks, had Issue one Daughter married to Nicholas Honse; and a Copyhold Messuage and Lands held of the said Manor descended to the Desendant Hard-Justice Croke ing; that the Lord of the Manor, and the faid Nicholas House, who had married the Daughter, and this Case, tells she, joined in a Lease of the said Manor to the us, the Judges Plaintiff East for ten Years; and afterwards Harding, who was a Copyholder of Inheritance, cut down two greed, whether Elms, (there being no Custom found, Whether this was a Forseiture, or not) but a Custom was found to not, because it cut Timber for Repairs; and that Harding's House was out of Repair at the Time of cutting the Elms; that the Trees and that he had employed one of the \* Elms to rewere necessary pair the House, and that the other was ready there for Repairs; for that Purpose; this was adjudged a Forfeiture, and that the and that the Lessee of the Manor for ten Years, and

Defendant cut them for that Use. \* Nota, This was five Years after the Cutting down.

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not the Lord himself shall take Advantage of it. Moor 392. East versus Harding. The Reporter was Counsel for the Plaintiff.

in his Abridgment, Tit. Copyhold, E. 18. who tells

us, that it was adjudged to be no Forfeiture,

16. And in another Case it was held a good Cu- See Winch 1. stom, that all the Tenants within such a Manor in 2 Brownl. S5. Essex, had used to cut down Trees to repair their Hob. 11. Freehold and Copyhold Tenements within that Manor. 1 Bulst. 50. 4 Leon. 238. \* Glascock's Case. Godb. 234.

17. If a Lord of a Manor grant to a Copyholder the Trees growing on his Copyhold Lands, or the Trees growing on his Copyhold Lands, or which shall hereafter grow there, he may fell and carry away all the Trees then growing, but not those that grow there afterwards, for as to them this

Grant is void. Moor 94.

18. A Copyholder of Inheritance brought an Ac-Cro. Eliz. tion against the Lord, upon a Custom, that every 629. Copyholder should have the Lops of the Pollengers Moor Case growing on his Copyhold Land; and sets forth, 727. S.C. that the Desendant cut down two Oaks which were Pollengers, and so he lost the Benefit of the Lops; and adjudged that the Action would lie.

19. Adjudged that a Copyholder might, without Cro. Eliz. any Custom to enable him, cut off the under 361. Boughs of Trees, because this is no Waste; but he

cannot cut off the top Boughs.

20. Neither can the Lord cut down all the Tim- 12 Rep. 68, ber-Trees, but ought to leave sufficient for Repairs, 69. for if he doth, an Action of Trespass lies against him, Quare clausum fregit & arbores succidit, for Cu-stom hath fixed them to his Estate of Inheritance for

necessary Repairs.

21. A Copyholder for Life cut down Timber, his Chan. Rep. Copyhold Tenements being out of Repair, and this 95, 96. was found a Forfeiture upon a Trial in Ejectment; and upon a Bill in Chancery exhibited to be relieved against this Verdict, the Plaintiff insisted, that the Timber was but of small Value, and that his Copyhold was out of Repair, and that the Cutting the Timber was intended to repair it; the Lord Chancellor directed an Issue at Law, Whether the primary Intention was to commit Waste by

# Trees arowing on Coppholos.

felling this Timber; and it was found that it was not, and therefore he decreed, that the Lord should deliver Possession of the Copyhold, and account for the mean Profits.

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Chan. Cafes 199. Ayry verfus Bellingham.

22. The Plaintiffs were Copyholders of Inheritance of the Manor of S. in which the Custom was for them to enjoy the Timber and Wood growing on their Copyholds without Control of the Lord, who had fold, cut, and disposed the Trees, Oc. The Defendant, as Lord of the Manor, claimed the Property of the Timber-Trees, and that the Tenants had only a Right to cut old and decayed Wood for Fuel, but no Timber other than for necessary Repairs, and that not without License of the Lord.

The Court directed a Commission to issue to certain Persons to be named by a Six-Clerk, to set out fufficient Timber and other Wood upon their Copyhold Ekates, for all Manner of Boots of Efto-

vers. O'c.

## Waif.

## (A)

IIT Aif is that, or those Goods which are stolen, and the Thief being closely pursued or overburthened with them, leaves them behind; in such Case the Bailiff of the Manor, in whose Jurisdiction such Goods were left, may seise them to his Lord's Use; but if the Felon is taken in the Purfuit, and the Owner profecutes, and gives Evidence

against him, he shall have Restitution.

2. And Waif may be of Goods which are not ftolen; as for Instance, Where the Thief is pursued and leaves bis own Goods, these shall be forfeited to the Lord of the Manor, and the Reason in both Cases is, because it shall be intended, that the \* Cro. Eliz. Owner was negligent in making \* fresh Pursuit after the Felon; and therefore the Law hath imposed this Penalty on him, that he shall lose his Property

694.

Property in those Goods which the Felon leaves behind him; but Goods stolen, and hid by the Felon, are not forfeited by his Flight, nor properly waived in Law; for the Felon must have the Goods about him at the Time when he is purfued to make them Bona Waiviata; but if he bides them, the Owner may \* Moor 572. take them where he finds them, and all this was ad- S. C. Cro. Eliz.

judged. 5 Rep. 109. in \* Foxley's Cafe

3. Bona fugitivorum are the proper Goods of the 693. S. C. Thief who flies and leaves them, being purfued; these are forfeited to the Lord of the Manor, but not until 'tis found by Indictment, or otherwise upon Record, that he fled for the Felony; for where Things are forfeited by Matter of Record, as the Goods of Fugitives are, they cannot be claimed by Prescription as + Waifs may, for these may be gain- † 9 Rep. 28.a. ed by Usage without Matter of Record. 5 Rep. in Foxley's Cafe.

4. A Thief having stolen a Sheep, and being purfued maived it in the Manor of T. S. where it was seised by the Bailist of the Manor as an Estray; it was held, that where the King is entitled to an Efray, the Prerogative vests a Property in him before Seisure, but a common Person (as a Lord of a Manor is) hath no Property before Seisure. Dyer 388.

5. In Trover and Conversion, &c. the Desendant justified as Servant to the Sheriff of Middlefex, setting forth, that T. S. the Plaintiff had stolen the Goods, and brought them to H. in the County of Middlefex, at which Place the Defendant took them ut Bona Waiviata; and upon a Demurrer to this Plea the Plaintiff had Judgment, because the Desendant did not politively alledge in Fact that a Felony was committed, and that the Goods were waived by the Felon. Cro. Eliz. 611. Davis's Cafe.

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die sale dersemt es traff a success Matte.

## Matte.

#### (A)

Admittance. (B) 4. S. C. 2. S. C.

Djudged, that where a Copyholder is feifed of three several Acres, being three several Forfeiture. (B) Copyhold Lands, and commits Waste in Part of one of those Acres, all that Acre is forseited, but not the other; for though they are all three in one Hand, yet every one is severally holden, and to each of them there is a feveral Condition annexed in Law not to commit Waste, which several Conditions follow the several Tenures; so where a Copyholder furrenders his Copyhold Lands to the Use of W. R. and the Lord admits him tenendum per antiqua servitia inde prius debita & de jure consueta, and afterwards the Surrendree commits a Forfeiture in one of his Copyholds, he shall forfeit that one and no more, for the Tenendum continues the feveral Tenures, reddendo singula singulis; so that 'tis not material if the Copyholds are in one or feveral Copies: All this was adjudged in 4 Rep. 27. in Taverner and Cromwell's Cafe.

2. Lessee for Years of a Manor covenanted to keep the Houses and Buildings in Repair, and to leave the Manor in as good an Estate as he found it, when the Term should expire; but yet during the Term he committed Waste in permitting the Houses to be out of Repair, and in cutting down Timber-Trees: It was adjudged, that the Lessor might have an Action of Covenant against him before the End of the Term for the Cutting down the Trees, because it was impossible that the Covenant as to that Part should be performed afterwards; but 'tis otherwise as to the Repairing the Houses; for that may be done before the Term expires. 5 Rep. 20. in Sir Anthony

Mayne's Cafe.

3. A Copyholder for Life committed Waste: Adjudged that it shall not make a Forfeiture of the Estate of him in Remainder. Cro. Eliz. 880.

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Copyhold Lands were granted to two successive for their Lives; the Tenant in Possession cut down Trees; this is a Forfeiture to him in Reversion.

4. In Replevin for taking a Gelding in Delph- See the field, the Defendants made Conusance as Bailiss to Pleadings in Jane Ball, who was seised in Fee of the Place this Case in where, &c. and so justified the Taking, &c. Da- the Appendix, Way. pl. 1.

mage-feafant.

The Plaintiff pleads in Bar to the Conulance, that before the faid Jane Ball was seised, O'c. one Richard Sneyde was seised in Fee of two Parts of the Manor of Tonstal, of which the Delphsteld, the Barnyard, the Great Knowl, and the Limefield, were Parcel; and that in the Limefield there had been Time out of Mind a Coal-Mine called the Great Rowe; that the faid Richard Sneyde by Indenture, demised a Moiety of the faid Coal-Mine to one William Burflem, for ninety-nine Years, with free Liberty of Ingress and Regress, with all Manner of Carriages unto and from the faid Mine, and to dig the Coals there; that the faid William Burstem died Inteltate, and Administration was granted to John Burstem, who granted all his Interest in the faid Coal-Mine to one John Colclough, who devised the fixth Part thereof to one Aaron Wedgwood, for the Relidue of the faid Term for ninety-nine Years, and made three Executors, and died; that one of the Executors affented to this Legacy; whereupon Aaron Wedgwood entered, of whom the Plaintiff bought One hundred Horse-load of Coals which were digged out of the fixth Part of the faid Coal-Mine, and which laid on the Brink thereof, and gave Licenie to Simpson the Plaintiff to take and carry them from thence to the Highway, by and through a Way over the Delphfield, which was the usual and convenient Way, Oc.

The Defendants in their Replication confess the Seisin of Sneyde, and Demise to Burstem, but that at the Time of the faid Demise, the Delphfield was Copyhold held of the faid Manor of Tonftal, which faid Copyhold Sir William Sneyde, Lord of that Manor, granted to one Tho. Trick and his Heirs, who furrendered the same to his Son and Heir Samuel Trick and his Heirs, who was admitted; that afterwards

the said Sir William Sneyde, made a Feoffment of the said Manor to Ralph Sneyde and his Heirs, who made another Feoffment of the Copyhold Premisses to Tho. Trick, by the Name of Thomas Tellwright and his Heirs, by which the said Copyhold was extinguished; that Thomas Tellwright died seised, and that the Premisses descended to John his Son and Heir, who made a Feoffment thereof to Jane Ball and her Heirs; and avers, that at the Time of the Demise to the said William Burslem, there was no Coal-Mine open in the Limeseld, nor any Way over

the Delphfield, &c.

Upon a Demurrer and Joinder in Demurrer it was objected, that the Owners of the Mine in the Limefield, could have no Way over the Delphfield, because it did not appear in the Pleading, that there was an absolute Necessity for such a Way; 'tis true, the Plaintiff in his Bar to the Avowry fays, it was an usual and convenient Way; but it doth not follow from thence that it was of absolute Necessity; and if not, then the Lessee of the Coal-Mine can have no Way there, and so is Packer and Welfted's Case, Sid. 39. 111. But then it was moved, that in the principal Case, a Copyholder in Fee had purchased the Freehold and Inheritance of it, by Reason whereof the Copyhold Estate was extinguished; and therefore the Grant of this Way in the Lease of the Coal-Mine might operate, as well as if the Delphfield had been in the Hands of the Lord of the Manor when the Leafe was made; and upon this Point it was adjourned.

But the Replication was ill, because two Feoffments were pleaded without any Consideration, Habendum to the Feoffees and their Heirs, without saying to the Use of them and their Heirs. 2 Lum.

1247. Simpson versus Tellwright.

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1. IN Sir Henry Constable's Case it was resolved, that nothing shall be Wreck but such Goods which are cast by the Sea, or left on the Land; that Flotsam Maris is where a Ship is drowned or otherwise perisheth, and the Goods Flote on the Sea; that Fetsam Maris is where a Ship is likely to perish, and the Goods are thrown over-board into the Sea, that the Ship may be disburthened, and afterwards the peritheth; that Ligan is likewife where the Goods are cast over-board, the Ship being in Danger of perishing, and the Goods are so heavy, that they fink to the Bottom; therefore to the Intent that they may be found, the Mariners tie a Cork, or Buoy to them, that they may know where they are, for which Reason 'tis called Ligan a Ligande; but none of these Goods are Wreck, so long as they remain on or in the Sea; but if they are cast on the Land, then they are Wreck; and of these three Things the Admiral hath Jurisdiction, but not of Wreck, because that is on Land, and in the County where the Common Law takes Place, and therefore may belong to a Lord of a Manor by Pre-Scription, as well as by Grant. 5 Rep. 106. in Sir Henry Constable's Case.

2. Upon an Information on the Statute 1 Ed. 6. against the Desendant, for landing Goods, before the Customs to the King were paid, or agreed with the Officer to be paid, or, the Defendant pleaded in Bar, that the Lord Cobbam, was Lord of the Manor of B. &c. \* and that he, and all those whole \* Prescription Estate he had in the faid Manor, had Wreck of Sea, for Wreck. as appertaining to the faid Manor of B. in Suffex, which Manor contigue adjacebat altum mare; and alledged in Fact, that the Goods in the Information were cast on the Shore in the said Manor by Tempelt

of the Sea, by Reason whereof, he as Bailiss to the Lord Cobham, &c. seised them, and sold them, &c. Serjeant Moor, who reports this Case, makes it a Question, Whether this was a good Plea; it was not resolved. Moor 224. Sander's Case.

See the Pleadings in this Case in the Appendix, Wreck. pl.

3. An Action of Trespass was brought against the Defendant for taking and carrying away an Anchor and Cable, who justified, for that William Wharton and Benjamin Took were Lords of the Manor of Birling in the Parish of Eastdean in Sussex, which Manor lies next the Sea; then he fets forth a Custom in the faid Manor for the Lords thereof for the Time being, when a Ship is wrecked there, and cast on the Lands held of the faid Manor, between the Flux and Reflux of the Sea, to bury the Dead, and to take Care of those who are Living, and cast on the Land, being either fick or wounded, and to preferve the shipwreck'd Goods for the Use of the Owners; and in Consideration thereof the Custom. &c. was for the faid Lord of the Manor to have the best Anchor and Cable for his own Use, and so brings his Case within the Custom, and justifies the Taking the Anchor and Cable, as Servant to the Lords of the faid Manor, and by their Command, Gc. And upon a Demurrer to this Plea it was objected, that this was an unreasonable Custom, there being no good Consideration to support it; for what is alledged in the Plea, is no more than what the Lord of the Manor, and every Body else is obliged in common Charity to do: But it was adjudged, that a Thing may be good by Custom, without any other Consideration to support it, and which would not be good by Prescription without a Consideration; as for Instance; a Custom to turn his Plough on another Man's Land is good, because ploughing the Ground is for the publick Benefit, and so is the Custom alledged in this Plea, it being for the Encouragement of Navigation; 'tis true, to take Care of the fick and wounded is a Charity, &c. but 'tis not unreasonable to have some Manner of Recompence for a Charity; the Defendant had Judgment. 3 Lev. 307. Simpson verius Bythwood.

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4. In a special Verdict in Trover for an Anchor and Cable, the Case was, That the Plaintiff was possessed of this Anchor and Cable, and that the Manor of Miching in Suffex, bordered on the Sea, in which Manor there is a Custom, that if any Ship or Boat failing on the Sea, strikes on the Land held of the Said Manor, and perishes, though 'tis not Wreck, yet the best Anchor and Cable, &c. belongs to the Lord of that Manor; and that the Ship, to which this Anchor belonged, percussit super fundum & solum manerii pradicti, & adtunc & ibidem periit, but that all the Seamen were faved, and that the Defendant seised the Anchor and Cable for the Use of the Lord, &c. this Plea was adjudged ill, because no Custom of Salvage was found; so that this Custom is void, and without any Manner of Consideration to support it. 3 Lev. 85. Geer versus Burtenshaw.

By the Statute of \* Westm. 1. 'tis enacted, that if \* 3 Ed. 1. a Man, Dog, or Cat, escape alive out of a Ship or cap. 4. other Vessel, nothing therein shall be Wreck, but 2 Inst. 166, the Goods shall be saved and kept by the Sheriff, 167. and delivered to the Inhabitants of the Town where the Goods were found; so that if any within a Year and a Day, sue for them, and prove that they were his Goods at the Time of the Shipwreck, they

shall be restored to him without Delay.

It hath been held upon this Statute, that the Man, Dog and Cat, are put only for Examples, and that all other living Things are to be understood.

And that the Year and the Day shall be accounted from the Time the Goods were seised by the Sheriff; and that if the Proprietor dies within the Year, his Executor or Administrator shall be allowed to make Proof of the Property in the Testator, &c. and that if the Goods are Bona peritura, the Sheriff may sell them within the Year.

By the Statute 12 Anna, 'tis enacted, That Justi- 12 Anna, ces of Peace, Sheriffs, Mayors, and other chief Of- cap. 18. ficers of Towns adjoining to the Sea, and all Constables and Officers of the Customs in those Places, shall, upon Application to them made on Behalf of any Commander of a Ship in Danger of being stranded, or being run on Shore, call together as many Men as shall be necessary to the Assistance

and

and the Preservation of the Ship; and such Officer on Resulat or Neglect to assist, shall forfeit 100 sto be recovered by the Commander of the Ship, with Costs. &c.

4 Geo.

The aforesaid Statute was made perpetual by the Statute 4 Geo. and that if any Owner, Captain, Master, Mariner, or other Officer belonging to a Ship, shall wilfully cast away, burn, or otherwise destroy such Ship, or direct or procure the same to be done, &c. he shall suffer Death.

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## APPENDIX

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### PLEADINGS

IN

## Copyhold Cases.

(1.) Clench versus Cudmore.

HO' Cudmore Gen' fum' Copyholds. (I.) Effex, fl. fuit ad respond' Johanni Replevin. Clench de placito quare ces See the Repit aberia iplius Johannis port of this & ea injuste detinet contra vad' & plegios quous Case in Tique, ec. e inde idem Johannes per Johannem tle, Acts of Freeman attozn' fuum queritur quod pzedici' Tho- Parliament mas 30 die Aprilis anno regni Domini Regis, not extending et. apud Kelvedon in quodam loco ibid' vocat' Do- to Copyholds. vernotts cepit averia videl' duos equos ipsius Jo- pl. 8. In Re vernotts cepit averia videl duos equos iplius Jo-pl. 8. In Re-hannis Clench & ea injuste detinuit contra vad' & plevin for plegios quoulque, &c. unde dicit quod deteriozat' taking rwo

Act of Parliament not extending to

eft Horfes.

extending to Copyholds. Placitum. Cognisance as Bailiff to Mary and Elizabeth Sawill Infants, and their Guardian.

That the Lands are Copyhold, Parcel of the Manor of Coggesball.

The Defendant seised of the Manor in Fec.

And gave them Scisin by their Guardian.

A& of Par- eft a damnum habet ad valentiam viginti libeas liament not rum & inde producit ledam, &c.

Et predict' Thomas per Nicolaum Webber Ata toan' fuum benit & Defend' bim & injuriam quans Do, &c. & ut ballibus Mariæ Savill & Elizabethæ Savill infantium & Mariæ Bennet earum quardian' bene cognobit captionem averiozum pzedid' in predicto loco in quo, ec. & juste, ec. quia dicit qued idem locus vocat' Dovernotts in quo suppos nitur captio averiozum predici nert est & a tems poze cujus contrar' memozia heminum non ers istit fuit terra custumar' parcell' manerii de Coggeshall cum pertinen' in cem' Essex predict' ac dimissa ac dimissibilis per copiam rotulozum cus rie ejusdem manerii per Dom' manerii illius vel per seneschallum suum libe deputatum seneschallum curie ejustem manerii pzo tempoze existen' cuicunque persone sive quibuscunque personis ill' capere volenti vel volentibus in feedo simplici vel aliter ad voluntatem Domini fecundum cons' manerii predid' de quo quidem manerio cum pertinen' unde pred' locus vocat' Dovernotts in quo, &c. nunc oft & per totumtempus supravid' fuit parcell' ipfe idem Thomas diu & ante predict' tempus quo, ec. fuit & adhut existit seisitus in dominico suo ut de seodo & fic inde feifit' existens ipse idem Tho' postea & ans te pred' tempus quo, ec. scilicet ad curiam fuam manerii predict' tentam apud manerium illud 21 die Februarii anno regni dicti Dom' Reg' nunc, ec. per auendam Eldred Arris Gen' Deputat' Johannis Eldred Arm' adtunc fenes schallum iplius Thomæ curie manerii illius Granted the per copiam rotulozum curie ejusdem manerit Copyhold to concessed pred locum vocat' Dovernous cum pers two Infants. fin' in quo, &c. inter alia predicte Mariæ Savill Elizabethe Savill infantibus adtunc & adhuc infra etatem quatuozdecim annozum existentibus habendum & tenendum eisdem Mariæ Savill & Elizabethæ Savill heredibus & Affignatis fuis ad voluntatem Domini secundum consuetudinem manerii predicti ac adtunc e ibidem secundum consuctudinem ejusdem manerii per birgam belt= veravit eis seilinam inde per pzefat' Mariam Bennett

nett guardian' earundem Mariæ Savill & Elizabe- Act of Parthæ (ipsis Maria Savill & Elizabetha multo infi a liament not etatem 14 annozum ut prefertur eriften') vis extending to del' eadem Maria Savill modo etatis fer anno Copyholds. rum & dida Elizabetha modo etatis 5 annezum e non amplius existen' per quod eadem Maria Savill & Elizabetha per pred' Mariam Bennett eas rum guardian' postea & ante predia' tempus in quo, et. in predict' locum bocatum Dovernotts in quo, ec. inter alia intraverunt & fuerunt & Whereupon adhuc funt inde seisite in dominico suo ut de they enterfeedo ad voluntatem Domini secundum consue- ed, &c. tudinem manerii pred' & quia aberia predica pzedido tempoze quo, ec. herbam ibidem tunc crescentem depasten' & dampnum ibidem fas cien' idem Thomas ut ballibus picdid' Mariæ & Elizabethæ Savill infantium & Mariæ Bennett earum guardian' bene cognobit captionent ave: And the Deriozum predict' in predicto loco in quo, &c. & fendant as juste, &c. dampnum ibidem facien', &c. & pres their Bailiff Did' Johannes Clench Dicit quod predid' Thomas made Cog-Cudmore ut ballibus predict' Maria & Eliza- nifance Dabethæ Savill & Mariæ Bennett ratione preallegat' mage-fesant. captionem aperiozum pzedia, in bzediao loco in quo, et. justam cognoscere non debet quia die Bar to the cit quod bene & verum est quod predict locus Cognisance. vocat' Dovernotts in quo, &c. est & a tempoze cujus contrarit memozia hominum non existit Confessing fuit terra custumaria parcell' pred' manerii that the de Coggeshall-Hall cum pertinen ac dimissa e is Copyhold. dimissibilis per copiam rotulozum curie ejus dem manerii per Dominum manerii illius vel per seneschallum suum sive deputatum ses neschallum curie ejusdem manerii p20 tempos re existen' cuicunque persone vel quibuscunque personis ill' capere volenti vel volentibus in feodo limplici vel aliter ad voluntatem Dos mini fecundum confuetudinem manerii pzed' prout previd' Thomas superius allegabit sed ident Johannes Clench ulterius dicit quod Diu ante predictum tempus quo, fc. feil' 20 die Junii anno Domini 1688 quidam Thomas Sa- But that vill gen' pater predit' Mariæ Savill & Eliza- Tho Savill. bethæ Savill apud Kelvedon predit' condidit made a Will, teltamentum & ultimam voluntatem fuam in A 2 fcriptis

A& of Parliament not Copyholds.

and devised the Guardianship of his faid Son and Daughters, &c. to his Brother Fohn Savill and his Daughter Elizabeth.

And made the faid 7ohn Savill Executor, and died.

The Executor proved the Will.

And took the Guardianship of John and Mary Savill.

scriptis & eandem ultimam voluntatem suam manu sua propria adtunc & ibidem signabit & extending to ficillabit & eandem debito modo publicabit in vzesentia trium credibilium tellium & eadem ultima voluntas adtunc e ibidem attelfata e subscripta fuit per eosdem testes in presentia Dicti Tho Savill per quam quidem boluntatem pred' Tho' Savill committ cuffodiam Anglice the Guardianship filit sut Johannis Savill page Dict' & filie sue Mariæ Savill fratri suo lohanni Savill & predict' filie sue Elizabethæ Savill Johanni Cardell requiren' predict' Johannem Savill fratrem & predictum Johannem Cardell ad curandum predict. Johannem Savill filium & Mariam Savill & Elizabetham Savill provide & ie educare vivel' previd' Johannem Savill filium usque etatem suam 21 annoquin & predict' Mariam & Elizabetham Savill ufque eartim respectivas etates 20 annozum & de ultima voluntate supradica constituit predict' Johan' Savill fras trem suum executozem & postea scilicet ultimo Die Junii anno Domini 1688 pzedictus Thomas pater apud Kelvedon predict obiit post cujus moztem predict Jonannes Savill feater accepto super se onere executionis testamenti predia testamentum illud in debita juris forma propapit videlicet apud Kelvedon predia' & pre-Did' Johannes Savill frater immediate volt moztem predict Thoma Savill accepit super se onus custodie predict' Johannis Savill filit & Marix Savill & cosbem Johannem Savill filium & Mariam Savill & terras & tenementa & bona & cas talla sua ad usum eozum in custodiam suam cepit videl' apud Kelvedon predict' & virtute predict ultime voluntatis ac vigore fatuti in hujusmodi calu edit' & provis' fuit custos & guardian' predicti Johannis Savill filit & Mariæ Savill & omnium terrarum & tenementozum bonozum & catallozum suozum & predia' Johan' Clench ulterius dicit quod predia' Thom' Cudmore de manerio predicto cum pertinentiis ut prefertur feilit' eriften' voft mortem predicti Thom Savill & ante predictam concessionem prefate Mariæ Savill & Elizabethæ Savill superins fieri supposit' scilicet ad curiam fuam manerit

Ini predicti tent' apud manerium illud 24 Die Act of Par-Augusti anno Regni Dom' Jacobi nuper Regis liament not Anglie secundi 4to. per quendam Georgium An- extending to drews gen' tunc feneschallum fuum curie mas Copyholds. nerii illius per copiam rotulozum curie ejuls The Defen-Dem manerii concessit predict locum bocat' Do- dant being vernotts in quo, ec. inter alia prefat' Johan' Lord of the Savill filio habendum e tenend' eidem Johanni Manor, Savill filio & herevibus fuis ad boluntatem Do: granted Domini secundum consuetudinem manerii pred' birs vernotts to tute cujus quidem concessionis predict' Johan' Fobn Savill Savill filius in predictum locum in quo, et. his Heirs; intravit & fuit inde feisitus in dominico suo who enter'd, ut de feodo ad voluntatem Domini secundum consuetudinem manerii pred' & sic inde feisitus and died eriftens predicus Johannes Savill filius pottea feifed. scilicet ultimo die Decembris anno Domini 1688 apud Salvedon predict obiit fic inde feifit' post cujus moztem predia' locus vocat' Dovernotts in quo, ec. descendebat inter alia prefat' Mariæ Savill & Elizabethæ Savill ut fozozibus & co: Descent to heredibus pred' Johan' Savill filit eadeinque Maria his Sifters Elizabetha ratione bescensus illius in predict' Mary and locum in quo, gc. ante predid' concessionem eis Elizabeth the ut prefertur fieri supposit' intraverunt & fue- Infants, runt & adduc sunt inde seisit in dominico suo who entered ut de feodo ad voluntatem Domini fecundum feised. consuetudinem manerii pred' & sic inde seist eriffen' e utraque earum infra etatem quatus ozdecim annozum & fub cuftodia ut pzefertur existen' virtute ultime voluntatis previd' ac bigoge statuti pred' ips' pred' Johan' Savill fra: The Guarter cuftes & guardian' predicte Maria ut pres dian demifed fertur eriften' virtute voluntatis previde ac vis Mary's Moiegoze statuti predicti ipse pred' Johannes Savill ty to the frater custos & guardian' predict' Mariæ existen' Plaintiff for postea & ante predictum tempus quo, &c. scil' one Year, 25 die Martii anno reg', &c. apud Kelvedon pred' ut cuftos & guardianus pred' Maria dis milit eidem Johanni Clench medietatem pred' Maria Savill predicti loci vocat' Dovernotts in quo, ec. (inter alia) habend' e tenend' eidem Johanni Clench a predicto 25 die Martii anno regni, ec. supradicto pro uno anno extune pror' A 3 fequen'

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Copyholds.

and justified the Putting in his Cattle.

And averred that Mary Savill is living, and under 14 Years old, and that Fohn Savill fill continued Guardian,

and was not a Popish Recufant: And that Mary Savill is not married.

Replication to the Bar.

A& of Par- fequen' virtute cujus quidem dimiffonis ident liament not Johan' Clench in predidum locum in quo, ec. extending to ante predidum tempus quo, 4:. fcil' 26 Die Martin anno, ec. supradicto intrabit & fuit & who entered adhuc existit de medietate inde virtute dimissioand was pof- nis predicte polleffonat' & lic inde polleffonas fessed, tus exilens ipse idem Johan' Clench ante pres didum tempus quo, ec. scil' 29 die Aprilis ans no reant, ec. supradido posuit predica aberia ipitus Johan' Clench in predictum locum in quo. tc. ab berbam in eadem crescentem depascen' prout ei bene licuit Duodque averia illa ea ras tione fuerunt in predict' loco in quo, gc. ber: bam in eadem crefcentem depafcen' quousque predia' Thomas Cudmore prediato tempore quo, ec. de injuria sua propria averia ipsius Johan' Clench in predia' loco in quo, ec. cepit & ea injuste betinuit contra bad' e plegios prout idem Johan' Clench superius versus eum que ritur & hoc parat' eft berificare unde petit iudicium & damna sua occasione captionis & injuste detentionis averiorum predict' sibi adiuvicari, ec. cum hoc quod idem Johan' Clench verificare bult quod predicta Maria Savill adhuc superfies & in plena vita & infra etatem 14 annogum existit vivel' apud Kelvedon predict' a quod predict' Johan' Savill frater tempore confegionis dimiffionis predict eidem Johanni Clench ut prefertur & continue postea hucusque fuit & adhuc eriftit cuftos & guardianus predicte Mariæ Savill virtute predict ultime voluntatis predicti Thomæ Savill ac vigore statuti predicti videl' apud Kelvedon predia' quodque predia' Johannes Savill frater non eft nec unquam fuit papalis recusans & quod predicta Maria Savill tempore mortis pred' Tho' Savill & semper postea fuit & adhuc est sola & innupta videl' apud Kelvedon previt.

Ot predict' Thomas Cudmore dicit quod ipfe per aliqua preallegata a cognitione sua predicta habend precludi non debet quia dicit quod bes ne & verum est guod predid Thom' Savill pas ter predicto ultimo die Junii anno Domini 1688 obiit ac bene & veruin est quod ipse idem Tho-

mas Cudmore de manerio predicto cum perti: Act of Parnen' ut prefertur feifit' eriftens poft mortem liament not predict Tho' Savill & ante predictant concesso; extending to nem prefate Mariæ Savill & Elizabethæ Savill Copyholds. per ipsum Thomam Cudmore lie ut prefertur The Grant to fadam feil' ad curiam fuam manerit fut pres 70hn Savill dicti 24 die Augusti anno regni, ec. supradicto is confessed; per copiam rotulozum curie ejusdem manerit concessit predia' locum bocat' Dovernotts in quo, ec. prefato Johanni Savill filio modo & forme prout predict' Johannes Clench superius allega-vit Quodque idem Johannes Savill filius virtute concessionis illius in eundem locum in and that he quo, ec. intrabit & fuit inde feifitus in Domi: entered, nico suo ut de feodo ad voluntatem Domini secundum consuetudinem manerii prædict' & postea chit sic inde seisitus ac idem locus bocat' Do- and died vernotts in quo, &c. inter alia descendebat pres seised. fat' Mariæ Savill & Elizabethæ Savill ut fo2021: bus & coheredibus iplius Johannis Savill filis prout predictus Johan' Clench superius etiam allegabit sed ibem Thom' Cudmore ulterius bis \* It was faid cit quod tisdent Maria Savill & Elizibetha Savill this was not infra etatem 14 annorum sic ut prefertur er good, beiskentibus & quoad terras custumar suas de pre cause not Dido manerio ut prefertur tent' nullum guars positive; but dian' seu custodem earundem terrarum custus it was held mar' habentibus \* Ac eo quod ad ipfum Thomam well enough. Cudmore ut dominum dicti manerii pertinuit se- † It should cundum † cons' manerii predicti a toto tempoze have been supead' ulitat' admittere e assignare hujusmodi quod infra infantibus quoad easdem terras suas custuma: manerium rias guarrian' feu custodem earundem terrarum predict' talis cultumar' ipse idem Thomas ad curiam suam habetur cons. manerii sui predicti predicto 21 die Februarii the Manor anno secundo supradicto in forma predict' per admitted a copiant rotulozum curie ejusdem manerii ad Guardian, milit & affignabit prefatam Mar' Bennett quoad (viz.) Mary terras cultumarias predici Maria Savill & Eli- Bennett. zabethæ Savill pzedict guardian' earum seu cu And deliver-ktodem earundem terrarum custumar' & con ed Seisin to cestit eidem Mariæ Bennett hujusmodi custodis the Guardiam ac per feneschallum suum predict' ad eans an till the Dem curiam deliberabit et inde feifinam ba Infants camo

bend of Age.

Copyholds.

The Infants were admitted by their Guardian,

and were feised, &c.

And by the faid Thomas Cudmore took the Cattle Da-

Demurrer special.

Act of Par- bend' & tenend' quousque predicta Maria Savill liament not & Elizabetha Savill ad etatem fuam biginti & extending to unites annount attingerent aut altera earum attingeret fecundum consuetudinem manerii pzedia' a tempoze cujus contrarii memozia hominum non existit usitat' & approbat' necnon ad eandem curiam eo quod predict locus in quo, ec. pocat' Dovernotts parcell' terrarum cultus mar' illarum tisdem Mariæ & Elizabethæ Savill in forma predicta bescendiffet admisit eas inde tenen' per predictam Mariam Bennett earum guardian' videl' in forma predicta in cognitione predicta specificata & concessit eisdem Marix & Elizabethæ predictum locum vocat' Dovernotts cum pertin' in quo, ec. (inter alia) terras fuas cultumarias habend' & tenend' eisdem Mariæ & Elizabethæ Savill heredibus & affignatis fuis ad voluntatem Domini secundum consuetudinem manerii predicti & adtunc & ibidem fecundum consuetudinem ejusdem manerii per virgam deliberabit eis inde feilinam per pzefatam Mariam Bennett guardian' earum per quod eadem Maria Savill & Elizabetha Savill per eandem Mariam Bennett earum guardian' pos Mea & ante predictum tempus quo, ac. in pres diaum locum vocat' Dovernotts in quo, ec. (in-Andentered, ter alia) intraverunt & fuerunt & adbuc funt seisit' in dominico suo ut de feodo ad voluntatem Domini secundum consuetudinem manerii predicti prout idem Thomas Cudmore superius allegabit & quia predida aberia predido tempoze quo, ac. fuerunt in predicto loco in quo damnum ibidem facien' idem Tho' Cudmore ut ballibus predicte Maria Savill & Elizabetha Savill infantium & Marix Bennett earum guars their Bailiff, Dian' eadem aberia fic Damnum facien' cepit prout iple per cognitionem fuam predict' supes rius placitavit & hoc paratus est verificare uns mage-fesant. de petit judicium & retozn' averiozum una cum damnis, ac. fibi adjudicari, ac.

Et passidus Johannes Clench Dicit quod plas citum predictum predicti Thoma Cudmore sus perius replicando ad barram advocationis ipfius Johannis placitat' minus sufficiens in lege eriftit j

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las fu2 ip, ege atit

eristit ad ipsum Johannem ab actione sua pres A& of Parbida habendum precludend' quodque ipfe ad liament not placitum illud modo & forma predia' replicando extending to placitatum necelle non habet nec per legem Copyholds. terre tenetur respondere a hoc paratus est bes rificare unde pro defeau sufficientis replicatio nis infins Thoma in hat parte ibem Johannes ut prius petit judicium & damna sua occasione captionis a injuste detentionis aberiozum pzedidozum fibi adjudicari, ec. & pzo causa morationis in lege super placitum illud idem lohannes jurta formam statuti in hujusmodi cas su nuper edit' & provis' oftend' & curie hic monfirst has causas subsequentes videl'eo quod con, Cause of suetudo predicta in placito illo specificat est Demurrer. minus apte placit' e in se insufficiens ac incerta ac tota materia vibidem contenta in advocatione predicta conteneri debuit, ac.

Et predictus Thomas Cudmore er quo ipfe foinder in sufficientem materiam in lege ad captionem Demurrer. aberiogum pred' in predicto loco in quo. ac. fore justam cogn' & manutenend' superius alles gabit quam iple paratus est berificare quam quidem materiam predictus Johannes Clench non dedicit nec ad eam aliqualiter respondit sed perificationem illam admittere omnino reculas bit ut paius petit judicium & retoan' averiorum predict' una cum damnis, Ac. fibi adjus dicari & quia justiciarii se advisare volunt de & super premists prinsquam judicium inde reddant dies inde dat' est partibus predictis hic ulque, ec. ad audiend' inde judic' su' quod tidem iufticiarii bic inde nondum, &c.

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Admittance, & what fhall excuse the Forseiture for refusing to be admitted.

See the Report of this Case in Tit. Fines upon Admittances, what shall excuse the Non-payment. (A) placito 2.

Ejectment.

#### (2.) King versus Dilliston.

(2.) Suffolk, ff H. Dilliston nuper de Swefling in Com' pred' Deoman attach' fuit ad respondend' Tho' King de placito quare bi e armis unum melluag' 20 acras terre 5 acras peati & 10 acras pasture cum pertin' in Sweffing que Alicia Goulty vidua etd Thoma dimilit ad termin' pred' qui nondum pzeteriit intravit & iplum a firma sua pzedict ejecit & alia enozinia ei intulit ad grave dampn iplius Thomæ & contra pacem Domini Regis nune, etc. & inde idem Thomas per Ric. Pupplet attorn' fuum queritur quare cum predicta Alicia I die Aprilis anno Regni Domini Res gis nunc primo apud Swefling predict' dimitils set eidem Thomæ tenementa predict' cum pers tin' habend' a occupand' eadem predicto Thomæ & affignatis suis a festo annunciationis beate Mariæ Virginis tunc ultime preterito ulque ti= nem & terminum guinque annozum extunc pzor sequen' & plenar' complend' & finiend' virtute cujus quidem dimissionis idem Thomas in tes nementa predica cum pertin' intravit & fuit inde possession' ipsoque Thoma sie inde possessio onato existente predictus Henricus postea scil't secundo die Aprilis anno primo supradicto apud Swefling supradictum bi & armis, &c. in tenes menta predia' cum pertinen' que predica Alicia eidem Thomæ in forma predict dimilit ad terminum qui nondum preferit intravit & ipsum a firma sua predicta ejecit a alia enormia ei intulit ad grave dampnum iphus Thomæ & contra pacem, ac unde dicit quod deteriozatus eft & dampnum habet ab valentiam 101. & inde producit sedam, ac.

Ot predictus Henricus Dilliston per Willielmum Betts attorn' suum venit & defendit vim & injuriam quando, &c. & dicit quod ipse non cat culpabilis de transgressione & ejectione predict

Plea, &c. the general Issue. g

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did' prout predictus Thomas superius versus eum Admittance queritur & de hoc ponit le luper patriam & &c. what predict' Thomas similiter ideo precept' est vice, shall excuse comiti quod venire faciat hic a die Sande Tris the Forfeinitatis in tres septimanas 12, Ac. per quos, ture for not being adet. & qui net, et. ad recogn', et. quia tam, mitted. er. ad quem diem jurata inter partes predictas The Venire de predicto placito polit' fuit inde inter eas in facias. respeau hic usque ad hunc diem scil't a die Sand' Mich' in tres feptiman' tune por' fequen' nili justiciar' Dom' Regis ad assisas in com' pzedia' capiend' affign' per formam fas tuti, &c. Die Martis 28 Die Julii poor preterit' apud villam Gippi in com' predict prins ben' A modo hic ad hunc diem ven tam predict Thomas quam predictus Henricus per attorn' fuos predict & prefat' justiciar' ad afflas coram, ac. mis hic recordum fuum in hec berba \* \* The Poftea. Poltea die & loco infra content' cozam Thom' Jones mil' capital' justiciar' Dom' Reg' de banco A Job Charleton mil' uno justiciar' dicti Dom' Regis de banco justiciar' Dom' Regis ad as fisas in com' Suffolk capiend' affign' per form' tratuti, ec. ven' tam infrancminat' Tho' King quam infrascriptus Henricus Dilliston per attoan' suos infra content' & jur' jurat' unde infra fit mentio exac' similiter ven' qui ad veritatem de infra contentis dicend' elect' triat' & jurat' + dicunt super sacrament' suum quod + Special ten'ta infrafcript' cum pertin' in quibus sup: Verdict. ponitur transgressio & ejectio infrascript' fieri funt & a toto tempoze cujus contrarii memos ria homin' non existit suer' parcel' & tenemen' # + That the cultumar' maner' de Swesling Campley cum per Lands were tin' in dido com' Suffolk & per tot' tempus il Copyhold, lud dimissa & dimissibilia per copiam rotulozum Parcel of curie maner' illius per dominum bel dominam the Manor ejusdem maner' peo tempoze eriften' cuicun; of Swefling. que persone live quibuscunque personis illa ca: \* H. Warner pere volenti vel volentibus in feodo simplici and his Wife vel aliter ad voluntatem domini vel dominæ se- in Right of cundum consuetudinem manerii predict quodque the Wife. ante infrascript' tempus in quo supponitur trans were seised grellio & ejectio predict' viert quidam \* Henricus for the Life

Warner of the Wife.

Admittance, Warner & Elizabetha uroz in jure ejusdem Eli-&c. what the Forfeiture for not being admitted. † This would in a Plea: for the Defendant fer forth a # Remainder to Fohn Ballet in Fcc. should be the next Court. fented, a made for the Person who

hath Right ted. ted at that admitti ad tenementa predicta fecundum for first Court. mam furfum redditionis predicte Et fi huius

zabethæ fuerunt + feilit' de tenementis infrashall excuse script' cum pertinen' in quibus, etc. in domin' suo ut de libero tenemento pro termino vite ejustem Elizabethæ ‡ remanere inde Johanni Ballett & heredibus fuis fpetan' ad voluntatem domini secundum consuetudinem manerii nzed' have been ill & tidem juratoges fuper facrament' fuum ulterius dicunt quod infra manerium predidum habetur necnon a tempoze cujus contrarii mes mozia hominum non existit talis habebatur conshould have suetudo quod si aliqua sursum redditio aliqua; rum terrarum vel tenementozum cuftumar' mas Crant by the ner' predict' domino vel domine maner' pred' Lord. pro tempore existen' extra curia ejusdem mas nerit fecundum consuetudinem maner' illius fact' per homagium curie maner' predicti pre= fentat' fuerit ab primam curiam maner' pred' Custom that por post hujusmodi sursum redditionem apud a Surrender maner' illud tenend' tunc por' poft prefenta: out of Court tion' ill' in fozma pred' factam prima proclamas tio publica fact' fuit in eadem curia prima quod presented at hujusmodi persona que jus habuit admitti ad tenementa predicta lie furfum reddita beniret And that af- menta custumar' in hujusmodi sursum reddis ter 'cis pre- tione mentionat' fecundum toamam & effectum furfum redditionis illius Et fi hujusmodi \* per-Proclamati- fona que jus habuit admitti ad tenementa fic on should be furfum reddita non benisset ad eandem pais mam curiam & petiillet fe admitti nec admis' fuillet ad eadem tenementa cum pertinen' in to be admir- hujulmodi furlum redditione ut prefertur mentionat' tunc ad secundum curiam manerii pre-\* And that if dicti poor' post hujusmodi sursum redditionem fuch Person tenend' alia publica proclamatio fieret quod tas did not come lis persona que jus habuit admitti ut prefers to be admit- tur beniret ad eandem curiam & peteret se

modi persona que jus habnit admitti ut pres fertur non benisset ad eandem secundam curis Then another Procla-

mation should be made at a second Court.

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am & petiillet fe abmitti nec abmiffa fuiffet Admittance, ad eadem tenementa cum pertinen' in hujus &c. what modi sursum redditione mentionat' tunc ad ter, shall excuse tiam curiam maner' predicti proximam poft the Forfeifurfum redditionem predictant and manerium ture for not being adpredict' tenend' alia publica proclamatio facta mitted. fuit quod hujusmodi persona que jus habuit ad: mitti ut prefertur beniret ad eandem tertiam And if no curiam & peteret se admitti ad tenementa in Body came hujusmodi sursum redditione mentionat' Et si to be admittalis persona non venillet ad curiam illam & ted, then peticlet se admitti nec admilla sulset ad ead another Propeticlet se admitti nec admilla sulset ad ead clamation tenementa cum pertinen tunc seneschallus cu should be rie manerii predid' pro tempore eriftens pres made at a cevit & ver consuetudinem manerii a predicto third Court. toto tempoze pzed' cujus contrarii memozia hos minum non existit ulitat' in eadem precipere And if no consuevit ballivo manerii pzedicti seistre hujus Body came consuevit ballivo manerit predict ietute gujus at the third modi tenementa sic sursum reddita in manus Court, then domini bel domine manerii pecdicii peo tem the Steward poze existentis Et iidem juratozes super sacra according to ment' fuum predict' ulterius dicunt quod pres Cuftom did Dict' Henric' Warner & Elizabetha in jure pres command Dict' Elizabethæ de tenementis infrascript' cum the Bailiff to pertinen' in quibus, ac. in forma predicta fei seise to the sit' existen' remanere inde presat' Johanni Bal- Use of the lett & heredibus fuis in forma predicta fpedan' Lord. tidem Hen' Warner & Elizabetha & Johannes Bal- That Henry lett ante infrascriptum tempus in quo, &c. Warner and scilt' ferto die Aprilis anno Regni Diai Dom' his Wife furregis 34 extra curiam fecundum cons' maner' rendred out predict fursum reddiderunt in manus dice of Court to Aliciæ adtunc legitime domine maner' predict the Lady of existentis tent' infrascripta cum pertin' in quis the Manor. bus, &c. ad ulum cujusdam Roberti Freeman & To the Ule heredum suozum in perpetuum quodque idem of Robert Robertus Freeman polt fursum redditionent ill' Freeman and in forma predicta factam & ante aliqua curia his Heirs. maner' predicti post candem sursum redditio who died benem tent' scilt' primo die Augusti anno regni fore the next Dicti nuper regis 34 supravicto obite ac quod Court; and quidam Johannes Freeman fuit & eft filius unt that Fo. Freecus & heres predicti Roberti Freeman & ut fis man is his lius & heres ejusdem Roberti Freeman jus has Sonand Heir

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& c. what shall excuse the Forfeiture for not being admitted.

who had admirted,

an Infant.

next Court.

And Proclamation was made for him who had Right to be admitted, but no Perfon came.

clamation

Admittance, buit fuife & elle admillum ad tenementa pred' cum pertin' in quibus, &c. jurta formam & effedum furfum redditionis pred' in forma pres dida fade Et juzatozes pzedidi super sacram' fuum predidum ulterius dicunt quod predidus Johannes Freeman tempoze moztis pzedice Roberti Freeman patris sut fuit & adhuc existit infra etatem viginti & unius annozum Duods Right to be que predictus Robertus Freeman mortuus est & predictus Johannes Freeman filius & heres fuus but was then infra etatem biginti & unius annogum fic ut prefertur eritten' idemque Johannes Freeman jus fuille & elle admillium ad ten'ta predicta cum pertinen' ut prefertur habens sursum redditio The Surren- predicta per prefat' Henricum Warner & Elizader made by betham & Johannem Ballett in manus predict' Warner, and Aliciæ ut prefertur fada postea scilt' ad prim' was present- curiam maner' predict' pror' post sursum reddi= ed at the tion' illam in forma predict factam tentam a= pud manerium illud 8 die Septemb' anno rege ni didi nuper regis 34 supzadido per homagium ejusdem curie debito modo & secundum consuetudinem maner' predict' presentata fuit a immediate post hujusmodi presentationem sursum redditionis pred' in ead cur' per homas gium factam publica proclamatio facta fuit adtunc in eadem curia quod hujulmodi persona que jus habuit admitti ad tenementa predica cum pertinen beniret ad eandem curiam tunc ibidem ut prefertur tent' & peteret se admitti ad ten'ta predicta cum pertinen' sursum reddita quodque nullus ad eandem curiam ben' nec ad eadem tenementa admidus fuit per quod pos ftea ad fecund' cur' maner' poor' post furfum reddition' predia' in forma predicta fact' tent' apud maner' illud decimo tertio die Junii ans no regni did' nuper Regis 35 alia publica Another Pro- proclamatio facta fuit adfunc in eadem curia quod hujulmodi persona que jus habuit admitti made at the ad tenementa predicta beniret ad eandem tus fecond Court riam tune ibidem ut prefertur tent' & peteret se admitti ad ten'ta predicta ut prefertur sur fum reddita quodque nullus ad eandem cur' venit nec ad eadem tenementa admissus fuit ver ed'

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per quod postea ad tertiam curiam maner' pre: Admittance, did' prop' post sursum redditionem predid' in &c. what forma predid' fad' tent' apud maner illud 23 shall excuse die Octobris anno regni dicti nuper regis 35 the Forsei-alia publica proclamatio facta suit adtunc in ture for nor eadem curia quod hujusmodi persona que jus being adhabuit admitti ad tenementa predicta fic fur: mitted. fum reddita veniret ad eandem cuitam tunc Another Proibidem ut prefertur tent' & peteret se admit' clamation at ad tenementa predicta ut prefertur furfum red, the 3d Court, dita quedque nullus ad eandem curiam benit but no Pernec ad eadem tenementa cum pertin' admis fon came. lus fuit per quod preceptum fuit per seneschal lum curie maner' predict' cuidam Tho' Clerke tunc ballivo maner predi quod tenementa presidic cum pertinen in manus predice Aliciæ tunc dom' maner pred seiliert qui quidem whereupon Thomas Clerke postea scilicet paimo Die No- the Steward vembris anno 45 supradico virtute precepti pre commanded did' in tenementa predicta cum pertin' intras the Bailiff to bit & eadem in manus pred' Aliciæ tunc dom' feise, &c. maner pred' seiliret Et iidem juratores super facrament' fuum predict' ulterius dicunt quod pred' Alicia Golty tempore sursum reddition' pred face a continue extunc huculque fuit a adhuc existit domina maner' predia' & inde les gitime seilita & quod post predict separales proclamationes & separales defalt pred ut prefer: tur fac & ante confectionem dimissonis infra specificat' scilt' I die Aprilis anno regni Dom' regis nunc primo infrascripto eadem Alicia domina maner' predicti Dictoque Johan' Freeman infra etatem viginti & unius annozum adtunc & adhuc existentibus ipsa pred Alicia in tenementa infeascripta cum pertinen in quibus, ac. tanguam libi fozisfada er caula predicta intravit a fuit inde feilita prout ler postulat, ac.

Then the Jury found the Leafe, Entry and Ouster, and made a general Conclusion.

Justice Lutwich in his Reports, fol. 769. tells us, Judgment was given for the Defendant, by the Opinion of all the Court, which is a Mistake:

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Mistake; for the Chief Justice Holt differed from the other three, and that a Writ of Error was brought in the Exchequer-Chamber, and that the Proceedings are reported at large in 3 Mod. but he thought the Record might be useful as a Precedent.

Amerciament in a Court-Leet. (2.) Evelyn versus Davis.

Action of Debt. See the Report ciament (E) pl. 4.

The Plain-Manor of Lagham,

and presented to have a Leet.

Sur. ff. TOhannes Davis nuper de Blechingley in com' predict' Husbandman sum= monitus fuit ad respondend' Georgio Evelyn ar' of this Case de placito quod reddat ei octoginta solidos quos in Tit. Amer- ei Debet & injuste Detinet & unde idem Georgius per Johannem Spencer attoan' suum Dicit quod cum idem Georgius modo fit & per spatium quinque annozum jam ult' elap fuillet seisit' de & in manerio de Lagham alias Wawtiff was feifed hamfted cum pertin' in com' predicto in domis in Fee of the nico suo ut de feodo idemque Georgius & oms nes illi quozum stat' ipse modo habet de & in manerio paed' cum pertin' a tempoze cujus contrarii memozia hominum non eristit habuerunt 'a habere consueverunt quandam curiam letam live visus fran' plegit de omnibus inhabitantis bus & relidentibus infra letam predict' coram feneschallo suo curie illius annuatim tenend' tanquam ad manerium pzedici' cum pertin' specian' cumq; infra jurisdiction' cur' lete pred' bidelt' in quodam loco bocat' Tylers Green jurta regiam viam ibidem ducentem a villa de Godstone in com' predict' usque ad villam de Croyden in codem com' iple pred' Johannes Davis 25 Die Mart anno regni Dom' Regis nunc 34 effost biversa argilleta anglice Clay-Pits infra decem pedes reg' bie pzedic' in pzofunditate serdecim pedes & in latitudine quadzagin' pedes & a regia via pzedia' per ripas vel

For digging Clay-Pits near the Highway,

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bel fensuras minime separata & argilleta illa Amerciafic effolia aperta & ablque fensura libe fepara, ment in a tione in regia via predicta per spatium trium Leet for a septimanarum & amplius reliquit & continua. Nusance in bit ad manifestum periculum necnon commus the Highne nocumentum omnium ligeogum didi Dom' way. Reg' nunc ibidem transeun' & superinde pred' and leaving Georgius de manerio pred' cum pertinentits sic them open, ut prefertur feisitus eriften' & pred' argilleta and not fic apert' jacen' ad curram lete five vifus fran' fenced from plegit pred' iplius Georgii manerii sui predict' the Hightent' apud manerium illud infra unum men way; sem post festum Pasche scilicet die Martis 18 die Aprilis anno reg' Dom' Reg' nunc 34 cos ram Johan' Glyde ar' tunc feneschallo suo cus rie lete live visus franci plegii pred' per sas tramentum Edwardi Stenning (and thirteen more) for which he tune inhabitantium & relidentium infra visum was presentfran' plegii ill' eristen' jurat' & onerat' ad in ed by the Ju-quirend' & presentand' ea que ad did' curiam ry at the lete live vilus franci plegii pertinen' presentat' Leet, &cs fuit quod pred' Johannes Davis infra jurisoice tion' curie pred' 25 die Martii tunc ult' pretes rito & diversis aliis diebus & vicibus tam ans tea quam postea & ante captionem illius pres fentamenti vi & armis infra jurisdiction' rie lete pred' vivelt' in predicto loco vocat' Tylers Green jurta altam viam regiam ibidem ducentem a villa de Godstone in com' predict usque villam de Croyden in com' predicto ipse predictus Johannes Davis effodit diberfa arcilleta anglice Clay-pits infra decem pedes regie vie vzed' in profunditate servecim pedes & in latitudine quadzaginta pedes & a via regia pres dida per ripas live fensuras minime separat' argill' illa sic effosta aperta a absque fensura sive separatione a regia via predica per spatis um trium septimanarum & amplius reliquit & continuabit in manifestum periculum necnon ad commune nocument' omnium ligeozum dicti dom' regis nunc ibidem transeun ob quod pres did Johannes Davis in eadem curia + amers † The De-

fendant was

amerced in the Lect, but did not fay to what Surts Elatus

Amerciament in a Leet for a Nusance in the High-way

\* Affecred . by the Jury which is wrong, for it should be sen by the Steward.

Another Prefentment for digging Clay-pits near the Road.

ciafus fuit quod quidem amerciament' per one nes Juratores predict \* afferatum fuit ad quas Deagent' folidos eidem Georgio Evelyn eriften' dom' manerii predict' folbend' per quod actio accrevit eid' Geo' Evelyn ad exigend' & habend' De pecfat' Johan' Davis peroin' quadeagint' folidos parcell' ped' ocoginta folidozum cumque etiam pred Georgius Evelyn de manerio pred cum pertinen' fic ut prefertur feilitus eriften' argilleta predicta sie aperta e minima inclus by those cho- sa sive separata a regia via predict' remanen' ad curiam lete five vifus franci plegii ipfius Georgii Evelyn manerii pzedid' tent' apud mas nerium illud infca menfem poft festum pafche scill' die Martis 10 die Aprilis anno regni dicti Dom' reg' nune 35 cozam prefato Johan' Glyde tunc seneschallo suo curie lete sive visus fran' plegit pred' per sacramentum Thomæ Laby (and fourteen more) tunc inhabitantium & residentiu infra let' five vis' franci pleg' pred' ill' eriften' jurat' a onerat' ad inquirend' a presentand' ea que ad vid' cur' lete sive visus franci pleg' pertin' presentatum fuit quod predict' Johannes Davis 29 Die Septembris tunc ult' preterito & Diber= fis aliis diebus & vicibus tam antea quam pos Mea & ante caption' presentamenti illius vi & armis fodit diverfa argilleta anglice Clay-pits in quodam loco vocat' Tylers Green infra juris diction curie illius jurta altam viam regiam ibidem ducentem a villa de Godstone usque ad villam de Croyden & pzedict argilleta anglice Clay-pits non claufit (anglice hath not fenced) ab & contra piedid' altam biam regiam fed eadem permilit jacere vacua & aperta ad manis fekum periculum necnon ad commune nocus mentum omnium ligeozum didi Domini Reg' nune ib' franseun' ob quod predicus Johannes merced, but Davis in eadem curia ultime mentionata amerciatus fuit quod quidem amerciamentum per to what Sum omnes juratores predictos ultime mentionatos

For which he was adid not fay he ought. And that

the same was affected by the Jury when it ought to be by Persons chosen by the Steward.

afferatum fuit ad quadzaginta folidos eidem

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Georg' Evelyn eriften' dom' manerii pied' fol Amerciabendos per quod actio accrebit eid' Georg' Eve- ment in a lyn ad erigend's habend' de prefato Joh' Da-Court-Leet vis predictos quadraginta solidos ult' mentio for a Nusance natos resid' pred' congunta solidorum pred' ta in the Highmen Johan' Davis licet sepius requisitus pred' way. octoginta folidos eid' Georg' Evelyn nondum reddidit sed illos ei hucusque reddere contradirit & adhuc contradicit unde dicit quod detes riozatus eft & dam' habet ad valentiam bis ginti libzarum & inde producit fedam, &c.

Demurrer general, and Joinder in Demurrer, and Judgment for the Defendant.

#### (4.) Hustler versus Brooke.

Ebor. st. Thomas Brooke nuper de Over-Court-Leet Flocton in com' pred' Yeoman for not apfummonitus fuit at respond' Will' Hustler mil' pearing. Richard' Osbaldeston mil' & Will' Osbaldeston ar' See the Rede placito quod reddat eis septuagint' & novem port of this folidos & undecim denarios quos eis debet & Case Amerinjuste Detinet, ec. & unde idem Will', ec. per ciament, (E)9. Robertum Hopkinson attorn' suum dicunt quod Dom' Jacob' primus nuper Rer Anglie feisit' That Kine fuit in jure cozone sue Anglie ut de feodo & Fames the jure de & in curia lete & vis franci plegii First was cum pertinen' & tot' & quolibet quod ad curiam seised of a lete seu vis' franci plegii pertinebat seu quo Court-Leet vismodo spedab' seu pertinere aut spedare deb' in the Manor infra manerium five dominic' ville seu Hamlet of West Bret-De West Bretton Cawthorn Over-Flocton & Ne- ton. ther-Flocton in pred' com' Ebor' ac infra precind' eogundem manerioz' fibe dominic' bill' # Hamlet # eogum cujuflibet in pged' com' Ebor' eristen' vel non eristen' parcel' ducat' Lanca- Parcel of the strize de comnibus reliden' & inhabitan' infra mas Dutchy of nerium five dominic' vill' & Hamlet pred' ac Lancafter. infra precina' eogun' manerioz' five dominic' B 2

Debt for an Amerciament in a

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Debt for an Amerciament in a Court-Leet for not appearing before the Steward or his Deputy,

vill' & Hamlet & eogum cujuflibet fibe eogum alicujus pred' curie let' vis' franc' plegit pres dominic' vill' & Hamlet pred' aut eorum alte quod bel infra precina' eogundem maner' fibe dominic' vill' & Hamlet vel eogund' alicujus ad tales vies & tempoze in anno quales predict' Dom' Rer Jacobus primus hered vel assignati fui vider' seu viderent oppoztun' convenien' aut necessar' secundum legem & consuetud' hujus regni Anglie cozam feneschallo ejustem Dom' Reg' curie illius aut deputat' hujusmodi senes thalli pro tempore existen' & sic inde seist' existen' predict' nuper Rer Jacobus primus postea per literas suas patentes sub magno sigillo Angl' ac sub sigillo ducat' Lancastrix simil' confed' geren' dat apud Westmon' in com' Mid' vicelimo nono die Junii anno regni sui Angl' decimo tertio ac Scotiæ quadzagesimo octavo quas tidem Willielm' Huftler Richard' & Willielm' Osbaldeston hie in curia proferunt tam p20' & in consideratione summe viginti solido rum legalis monete Anglie ad receptum scace carii sui apud Westmonast' ad usum suum per diled' subditum suum Georg' Wentworth de WhichCourt- Bulkliffe in West Bretton in com' Eborum gen' bene & fiveliter folut' unde idem nuper Dom' Ker fatebatur fe plenarie effe fatisfac' & pers folut' quam po biberfis aliis bonis caufis & confiderationibus eundem Dom' Regem specis aliter moventibus de gratia speciali ac er certa scientia & ex motu suis dedit & concessit p20 se heredibus & successozibus suis presat' Geor' Wentworth hered' & affign' suis de cetero in perpetuum quod haberent tenerent & gandes rent & habere tenere & gaudere valerent & possent infra maneria sibe dom' vill' seu Hamlet de West Bretton Cawthorn Over-Flocton & Nether-Flocton & eozum quodlibet in Dico com' Eborum ac infra precind' eorund' maneriorum five dominic' bill' & Hamlet & corum cujulis bet in dicto com' Ebor' existen vel non existen' parcell' ducat' Lancast' pred' cut' let' & vis' franci plegii de omnibus tenentibus relidens tibus

Leet the King granted to George Wentworth and his Heirs.

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tibus & inhabitantibus & al' reliden' & benien' Debt for en infra dominica fibe maneria bill' & Hamlet & Amerciaeozum cujuflibet fibe eozum alicujus pzed' cur' ment in a let' & bis' fran' pleg' bis per ann' de tempoze Court-Leet in tempus tenend' infra maneria fibe dominic' for not apbill' & Hamlet predict' aut eorum aliquod bel pearing. infra precind' eorundem maneriozum live do minic' vill' & Hamlet bel eozum alicujus eifdem in locis dichus & tempozibus quibus pred Georg' Wentworth hered' vel affign' sui vider' seu videren' oppoztun' convenien' & necestar' fecund' legem & consuetudinem hujus regut Angl' cozam feneschallo ejustem Georg' Wentworth hered vel asign' suozum pro tempore eritten' seu cogam Deputat' hujusmodi senes challi pzo tempoze eristen' & totum & quicquid ad cur' let' fen bis' franci plegii pertinuit feu quoquomodo speciabat seu pertinere aut speciare debuit quovismodo Ac etiam omnia & lingula amerciamenta fines fozisfaduras penas penalto tates perquitit' proficua libertates preheminen' pzivilegia jura & jurisdictiones quecunque ad pzedia cur let seu vis franci plegii ad dia Dom' Reg' aut successozes suos quoquomodo pertinere poterint aut deberent quarum quidem literarum patentium pretertu predict' Georgius By Virtue Wentworth seist' fuit ut de feodo & jure de & whereof the in curia lete & bis' franci plegit pred' cum faid George pertinen' & Diberlas curias & bis' franci pleg' Wentworth infra maneria fibe bominic' bill' & Hamlet De was feifed West Bretton Cawthorne Over-Flocton & Nether- of the said Flocton predict' fecundum donationem & conces Leet. sionem predict' in literis patentibus pred' cons tent' tenuit Et predia' Georgius fic de curia let' & bis' franci plegii cum pertinen' feisit' eriften postea scilicet secundo die Juli anno Domini millesimo sercentesimo tricesimo odaba apud Nether-Flocton pzed' obiit post cujus mozt' G. Wentworth pred' cur' let' & vis' fran' pleg' cum pertinen' des died, and the scendebant Willielm' Wentworth gen' ut filio Premisses & heredi ipsius Georgii who died without Issue, descended and so it descended to his Brother Thomas, who to Matthew likewise died without Issue; and so it descended Wentworth. to his Brother Sir Matthew, and from him to

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Amerciament in a Court-Leet for not appearing.

That Mat. Wentworth fold it to W. Huftler,

by Deed of Bargain and Sale.

Debt for an Sir Matthew his Son & predict' Matthæus fic ina De feisitus existen' postea scilt' odabo die Decembris anno Domint 1693 per quandam indenturam barganie & venditionis inter ipsum Matthæum Wentworth filium er una parte & pred' Willielm' Hustler, &c. er altera parte apud Nether-Flocton predict fact cujus quidem altes ram partem ligillo iplius Matth' Wentworth filit figillat' iidem Willielmus, &c. bie in curia proferunt cujus dat' est eisdem die & anno in consideratione quinque solid' ei pre manibus solut' per predictum Willielm' Huftler, &c. bars ganizabit & vendidit eisbem Willielm' Huftler, ec. predia' cur' let' & vis' franci plegit cum pertinen' habend' & tenend' eisdem Willielm' Huftler, &c. executozibus administratozibus & affin' fuis a die datus indenture predic ufque finem & termin' unius anni extunc pzor' sequen' a plenar' complend' a finiend' virtute cuius quidem barganie & venditionis & vigoze Natuti de ulibus in pollemon' transferend' in ea parte edit' & provis' tidem Willielm' Hustler, Ac. possessonat' fuerunt de curia lete & vis franci plegii predict pro termino illo & sic inde possessionat existen predictoque Matthæo Wentworth filio de reversione curie lete a vis franci plegii predia' cum pertinentiis ut de feodo & jure seiste existen postea scilicet nono die Decembris anno Domini 1693 supradict apud Nether-Flocton predict' per quandam aliam indenturam inter ipsum Matthæum Wentworth filium er una parte & predia' Willielm' Hust-ler, &c. er altera parte faa' cujus quidem alteram partem figill' ipfius Matt. Wentworth figillat' tibem Wilhelm Huftler, &c. bic in curia proferunt cujus dat' est eisdem die anno sus pravidis ipfe idem Matt. Wentworth filius res laravit eisdem Willielm' Huftler, &c. heredibus affign' fuis tot' fatum jus titulum & intereffe ipfins Matt. Wentworth filii De & in curia let' & bis' franci plegii predic' cum pertin' quozum quidem premillogum preter pre= . Did' Willielm' Huftler, ec. fuerunt & abhuc erift' feilit' de & in cur' let' & bis' franci pleg' cum

By Virtue whereof the faid William Huftler was Seifed, &c.

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cum pertinen' ut de feodo & jure predict' quod. Debt for an que Tho' Brooke 24 die Aprilis anno Domini Amercia-1703 & diu antea fuit reliden' & inhabitan' ment in a apud Over-Flocton predict' infra jurisdictionem Court-Leet lete & visus franci plegii predict & debuit praving sea' facere ad curiam vis' franci plegis pearing. ipsisque Willielm' Hustler Ricard' & Willielm' That the Osbaldeston de curia let' & vis' franci plegii Defendant pzedici' cum pertinen' sic ut pzesertur seisit' T. Brooks existen' cur' let' & vis' franci plegii pzedici' was an Intent' fuit apud Nether-Flocton predict infra habitant in maneria & dom' predict dicts 24 die Aprilis within the anno Dom' 1703 coram Richardo Witton at Jurifdiction seneschallo eorundem Willielm' Hustler, &c. cu of the Leet; tie illius de qua quidem curia sic tenend' de rie illius de qua quidem curia sic tenend' des and owed bita notitia dat' fuit residen' & inhabitantibus suit to the infra maneria dominica will' & Hamlet pecdit' Court. scilicet apud Nether-Flocton pzedia' Duodque That a predia' Tho' Brooke ad curiam illam feat suam Court-Leet non fecit nec comperuit feb befaltam fecit per was held at quod ad eandem curiam per juratores qui ad Netherinquirend' & presentand' ea que ad cur' let' & bis' Flotion, of franci plegii pertin' in ead curia jurat' & ones which the rat' fuillent presentat' fuit super facrament' Inhabitants fuum quod predia' Tho' Brooke abfunc reliden' had Notice, e inhabitan' fuit infra maneria predict' ac in That the fra jurisdiction' curie vis' franci plegii predict' Defendant e debuit sed' facere ad curiam vis' franci ple: Tho. Brooke git ill' & quod predict' Thomas Brooke licet ad did not aptunc solempniter exact' fuit non comperuit sed pear. defalt' fecit ratione cujus idem Thom' Brooke That his adtunc & ibidem per eandem curiam \* amer: Default was riat' fuit quod quidem amerciamen' per † Jo- presented by sephum Senior & Timotheum Roads adtunc re the Homage; liden' & inhabitan' infra maneria predicta affe- whereupon ratores per curiam ill' adtunc & ib' elect' & ju he was arat' adfunc in curia illa debito modo afferat' merced. fuit ad triginta & novem solid' & underim de: \*This ought

to be to a

certain Sum, and not in general as here, and afterwards affeered to a certain Sum; for the Amerciament ought to be certain, and afterwards mitigated. Hob. 129.

The Names of the Affectors must be fer forth, or else it is naught. Kelw. 66. a.

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Debt for an Amerciament in a Court-Leet for not appearing. Of which he had Notice. \* Mutuat'.

narios legalis monete Angl' unde predia' Thomas Brooke postea scilt' die e anno ult' mens tionat' apud Nether-Flocton pred' notitiam hab buit per quod acio accrevit eisdem Willielmo Huftler, &c. ad erigend' & habend' de pzedico Thoma Brooke predict trigint' & novem folidas & undecim denarios \* Cumque etiam predict' Thomas Brooke postea scil' paimo die Julii ans no Domini 1703 apud Nether-Flocton predict' mutuat' fuillet de predict' Willielm' Huftler, ec. triginta novem solidos & undecim benarios solvend' eisdem Willielm' Hustler, &c. cum inde requilit fuillet predictus tamen Thom Brooke licet sepius requilit' predia' triginta novem folidos & undecim denarios nec aliquem inde denarium eisdem Willielmo Hustler, &c. seu eozum alicui nondum reddidit sed ill' eis aut eozum alicui huculque reddere contradirit adhuc contradicit unde dicunt quod deteriozat funt & dampnum habent ad valenciam cens tum solidozum & inde producunt sed, &c.

† Nil dicit.

† Et predict Thomas Brooke per Henricum Wood attorn' suum venit & desendit vim & injuriam quando, &c. & nichil in bar sive presclusion' actionis predict Willielm' Hustler, &c. predict dicit quod iidem Willielm' Hustler Ric' Willielm' Osbaldeston reman' versus presat Thomam Brooke inde indesens' ideo consideratum est quod predict Willielm' Hustler, &c. recuperet versus presat Thomam Brooke debitum suum predict & damna sua occasione detention' debiti illius ad octo lidras eisdem Willielm' Hustler, &c. ex assensus fun per curiam hic adjudicat & idem Tho' Brooke in misericordia, &c.

Errors af-

Postea scil' die Martis prox' post odab' sand' Hillarii isto eodem termino cozam Dom' Reg' apud Westm' venit predid' Thom' Brook per Thomam Harvey attorn' suum & dicit quod in recordo & processu predid' ac etiam in redditione judicii predid' manifeste est erratum in hoc videl' quod narratio predid' in recordo predid' mentionat' & supra que judicium predid' in sorma predid' redditum est materiaque in eadem contenta minus sussicien' in lege er

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istunt ad judic' illud in forma predict' super: Debt for an inde reddit' manutenend' & lie judicium pzed' Amercia-superinde in forma pzed' erroneum & vacuum menr in a in lege existit Ideoque in eo manifeste est er Court-Leet

Erratum est etiam in hoc quod ubi per res pearing. coed' predict' apparet quod judicium predict' in forma predict' reddit' redditum fuit pro prefat' Willielm' Huftler, ac. versus ipsum Tho' Brooke ubi per legem terre hujus reg' Angl' judic' in pl'ito pred' reddi debuisset pro pref' Tho' Brooke versus ipsos Willielm' Hustler, ec. Joeoque in eo est erratum e petit quod judicium illud ob errozes illos a alios in recordo a processu pres Did' eriften' revocetur adnulletur & penitus peo nullo habeatur Duodque idem Tho' Brooke ad omnia que occasione judicii predia' amist res Mituetur & quod pzedia' Willielm' Huftler mil' Richard' Osbaldeston mil' & Willielm' Osbaldeston ad errozes predict rejungant a pred Wit Huftler, ftc. per Adrian' Moor attorn' fuum ben' & Catini dicunt quod nec in recozdo & proces pred' nec in redditione judicii predict' in ullo eft erratum & petunt quod curia did' Domin' Keg' nune his procedat ad examinationem tam recozdi & processus predia, diam materiam bres victam per ipsum Thomam Brooke superius pro erroz' affign' quodque judicium pecdia' in om: Judgment nibus affirmetur.

affirmed.

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(5.) Another Precedent of an Action of Debt for an Amerciament in a Court-Leet.

Gower versus Foster.

Amerciament in a Lect.

That the nor of C.

and prescribed to hold a Court-Leet twice in a Year.

That the Defendant was warned to come to Court to be held, O.c. on fuch a Day.

Ebor' fl. A Ntonius Foster nuper de H. in com' predict' gen' sum' fuit ad respond' Thom' Gower militi de placito quod reddat ei 40 solid quos ei debet & injuste detinet, &c. t unde idem Thomas per Laur' Royer attorn' fuum dicit quod cum ipfe idem Thomas feilit' fuit de manerio de C. cum pertinen' in com' Plaintiff was predicto in dominico suo ut de feodo idemque feised in Fee Thomas & omnes illi quozum statum ipse has of the Ma- bet in manerio predict' cum pertin' a tempore cujus memozia hominum non existit habuerunt & tenuerunt ac habere & tenere ust fuerunt & confueberunt quandam curiam vilus franci plegii infca manerium illud quolibet anno bis per ann' videl' semel infra mensem poor post feltum Sancti Michaelis Archangeli apud manes rium illud de omnibus reliden' & inhabitan' infra manerium ill' tenend' tanguam ad maner' pred' cum pertin' spedan' & pertinen' ipsoque Thoma de manerio pred' cum pertin' in forma previct' feisit' eriften' ac predict' Antonio 26 vie Septembris anno regni Domini Regis nunc undecimo & per spacium unius anni tunc poor' sequen' infea manerium illud residen' & inhabitan' idem Anton' Foster serto die Octob' ans no regni diai Dom' Regis nunc undecimo apud manerium de C. predict' legitime premo-nitus fuit ad comparend' ad pror' cur' visus franci plegii apud manerium illud decimo ters tio die Octobris tunc pror' sequen' tenend' & postea feilt' ad cur' vis' feanci pleg' ipsius Tho' tent' an

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ho' nt' tent' apud manerium ill' infra un' menfem Amerciapoor' polt feft' fand' Mich' feilt' predicto decimo ment in a tertio die Octob' anno regni dicti Dom' Regis Leet for not nunc undecimo supradia ecdem Thoma tunc appearing. de manerio predicto cum pertinen' in forma predict' feisit' existen' coram Hugone W. gen' tunc seneschallo ipsius Thomæ Gower curta bifus franci plegii per facram' R. D. (and eleven more) proborum & legalium hominum That he was infra maner' predict residen & inhabitan ad presented by presentand ea que in eodem visu scanci plegu the Homage presentabilia fuerunt onerat' & jurat' presentat' for not apfuit quod predict' Ant. Foster adfunc & din ans pearing, &c. tea fuit unus inhabitantium infra maner' predid quodque idem Antonius tunc existen un' inhabitan infra manerium illud & pzemonitus ad comparend ad visum illum ad eandem cur vilus franci plegii tunc ibidem folemniter erad' non comperuit sed defaltam fecit Db quod idem Antonius ad eandem curiam amerciat' fuit quod quidem amerciamentum per pred' R. D. (and For which eleven more) ad tunc afferatozes visus franci he was aplegii predict' ad hoc elect' & jurat' adtunc & merced, but ibidem afferat' fuit ad duos folidos & fer de not to a narios per quod actio accrevit eid' Tho' Gower certain Sum, bom' manerii pzedia' eriften' ad erigend' & bas and fo it was bend' de prefato Antonio Foster cosdem duos in Brooke and solidos & ser denarios Et idem Thom' Gower Case; but ulterius dicis quad cum inse de manerio neo, Case; but ulterius Dicit quod cum ipfe De manerio pred both in that cum pertinen' in forma predict' feilit' eriften' Cafe, and in ac predict' Antonius infra manerium illud res this it was siden' & inhabitan' idem Antonius decimo die held good, Septembris anno regnt dicti domini Regis nunc tho' there is undecimo supzadid' posuit canabum suum angl' a Case in His Hemp in quadam aqua currenti vocat' Dar- Hob. 129. to went infra maner' predict ad nocument' ligeo, the contrarum dom' Regis ibidem per quod ad curiam ry ipsius Thomæ visus franci plegii tent' apud which Amanerium illud pzedido decimo tertio die Octobris anno undecimo supzadid' cozam pzesat' ff. For put-Hugone W. adtunc seneschallo curie ipsius Thotting Hemp Gower visus franci plegii pzed' per sacrament' in the River pzedid' R. D. (and eleven more) pzesentat' suit Darwent; quod predict Antonius posuisset canabum suum

Amerciament in a Leet for another Offence.

Mutuatus.

in peedid' aqua currenti bocat' Darwent ad nos cumentum ligeozum Domini Regis ibidem ob quod idem Antonius adtunc & ibidem amercias tus fuit quod quidem amerciament' per predict' R. D. (and eleven more) autunc afferatozes bis which A- fus franci plegii predia ad hoc electos & jura-merciament tos adtunc & ibidem afferat fuit ad biginti sowas affeer'd. lidos per quod actio accrebit eidem Tho' Gower ad epigend' a habend' de presato Antonio eos dem viginti solidos acetiam cum predia Antonius predicto becimo tertio die Octob' anno regni domini Regis nunc undecimo supzadido apud manerium predict de C. mutuatus fuisset de eodem Thoma Gower semptembecim solidos & fex denarios folvend' eidem Tho' Gower cum inde postea requisit fuisset que quidem sevarales summe in toto se attingunt ad predia quadzaginta folidos predic' tamen Antonius licet sepius requisitus previa 40 s. eidem Thomæ Gower nondum reddidit fed illos ei hucufque reddere contradirit e adhuc contradicit ad Dampnum ipfius Thomæ Gower Decem libzarum e inde producit fedam, ec.

Ct pzedid' Antonius per W. W. attoan' fuum ben' & defend' bim & injuriam quando, ec. Et vicit quod ipse non bebet pzefat' Thom' Gower eosdem 40 s. net aliquem inde denar' in fo2= ma qua idem Thomas Gower superius versus eum narravit & de hoc ponit le super patriam & predia' Tho Gower similiter, gc. ideo, gc.

(6.) Another

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(6.) Another Precedent of an Action of Debt, &c. for refusing to be sworn of the Leet, &c.

The Bishop of Bath and Wells versus Goodwin.

Somerset, fl. D Ichard' Goodwin nuper De W. Amercianitus fuit ad respondend' Gilberto Bathon' & Leet for re-Wallen' Episcopo de plac' quod reddat ei qua- fusing to be deaginta solidos quos ei debet & injuste deti- sworn, &c. net, ec. Et unde idem Episcopus per ]. H. at: toan' fuum Dicit quod cum ibem Episcopus fet. The Plainfitus est & din fuerit seifitus de burgo & villa tiff seised of De Wellen in com' previd' in dominico suo ut the Borough be feede in jure Episcopat sui pred idemque Wells in Fee, nune Episcopus & predecestores sui Episcopi E- in Right of piscopatus sui predid' a tempore cujus contras the Churchtium memozia homin' non existit habuerunt & pabere consueverunt curiam visus franci pleg' cum omnibus que ad visum fran' plegit pertis And prescrinent infra burgum & villam predia' coram fes bed to hold & neschallo suo curie ejusoem burgi & ville p20 Court-Leet, tempoze existen' de omnibus tenentibus inhabis &c. fantibus & residentibus infra burgum & villam predict' bis per annum bibelt' femel infra un' mensem paor' post festum pasche & iterum infra un' mensem paor' post festum sandi Michaelis Archangeli annuatim tenendam tans quam ad burgum & villam predia' pertinen' iploque Episcopo sie inde feist' existen' quidam David Jones feneschall' ipfius Episcopi curiam fuam vifus franci plegit 20 die Aprilis anno

Amerciament in a Leet for refuling to be Iworn, &c.

That the Steward held a Court at Wells.

That the Defendant being an Inhabitant in Wells, and in the faid Court was required by the Steward to be fworn of the Homage. But he refused to be fworn.

And contemptuoufly faid he was Court.

For which he was amerced 40s.

reani, ec. nunc undecimo apud Wellen in Guihalda ejusdem Episcopi infra pzedid' burgum predid' ubi hujusmodi curie modo solito & debito antea teneri consueverunt tenuiset & predict' Richardus unus inhabitan' & relidentiu' infra precina' ejusdem burgi adtunc & ibidem presens in eadem cucia in propria persona sua exactus & requilitus fuit per feneschallum paes dia Episcopi curie predia jurari simul cum altis inhabitantibus burgi predia adtunc & ibidem juratis ad inquirendum p20 p2ed' dos mino rege nunc de & super certis articulis caulis & offenlis in curia illa tunc ibidem pres fentabilibus per feneschallum predict' ei & aliis then present juratozibus vzedid' in eadem curia adtunc & ibidem dand' & deliberand' predid' famen Richardus (fuch a Day and Year) apud, &c. paed' perversa mente & malitia sua obstinate & pers tinaciter reculavisset facere sacramentum suu' nec non debitum fuum ea parte in contempt' predict' cur' dicen' se fore judicem curie illius adtunc & ibidem feden' in cur' pred' calumps niavit & super se assumplit authozitatem audis endi judicandi eraminandi appunctuandi e des terminandi qualcunque materias & caulas in curia predid' ad libitum fuum abique aliqua reveren' seneschallo aut cur' pred' data habita aut Judge of the monttrata & adtunc & ibid' feneschal' pred' & alios officiarios curie predict' ad officia fua in ead' And diffurb- curia facienda & erequenda diffurbabit in coned the Stew- temptum & perturbation' curie predict' & ad malum exemplum aliozum in confimili cafu belinquentium per quod predict' Richardus per eundem feneschallum amerciatus adtunc & ibis dem fuit ad quadzaginta folid' unde actio accrevit eidem Episcopo ad erigend' & habend' de prefato Richardo predict' 40 s. predict' tamen Richard' licet sepius requilit', &c.

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### (7.) Barker versus Winch.

Berks, ff. CImon Winch nuper De Bray in com' Antient Depredict' gen' attachiatus fuit ad mesne. respondendum Thomæ Barker gen' de placito See the Requare bi & armis fer melluagia fer cottagia port of this seraginta acras terre seraginta acras paati tres Case in Ancent' acras pasture & quadzaginta acras bosci cient Demesne. cum pertinen' in parochia de Bray que Willi- (G) gl. 4. elm' Yeildall & Rebecca uroz eins eidem Thomæ demiserunt ad terminum qui nondum pres teriit intravit & iplum a firma lua pzedida ejecit & alia enozmia ei intulit ad grave dampnum iplius Thomæ & contra pacem Domini Regis, ec. nunc, ec. Ct unde idem Tho' Barker per Willielm' Turbill attoan' suum que ritur quod cum paedid' Willielm' Yeildall & Rebecca ur' ejus primo die Aprilis anno regni Domini Regis, &c. nunc Angl', &c. tertio apud paroch' de Bray dimilissent eidem Thoma pres did' ser messuagia ser cottagia seraginta acras terre seraginta acras prati trescent' acras pas Aure & quadzaginta acras bosci cum pertinen habend' & occupand' eadem tenementa predict' cum pertinen eidem Thomæ Barker & affign' fuis a vicelimo quinto die Martii tunc ult' pres terito asque plenum finem & terminum quinque annoqum extunc por' fequen' & plenarie complend' f finiend' virtute cujus quidem dis missionis idem Thomas Barker in eadem tenes menta cum pertinen' ult' supradicta intrabit & fuit inde possessionat' & sic inde possessionat' existen' predict' Sim' Winch postea scilicet pres dido primo die Aprilis anno tertio supradido vi & armis, &c. in pzedida tent' cum pertin' que predict' Willielm' & Rebecca ur' ejus eidem Thom' Barker in forma predicta dimilitent ad terminum predict' superius primo specificat' qui nondum preteriit intravit & ipsum a firma sua predicta ejecit a alia enormia eidem Tho Barker

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Ancient De-Barker infulit, &c. ad grave bamnum, &c. & contra pacem, ac. unde dicit qued deteriozat est & dampnum habet ad valentiam centum libzarum & inde producit fedam, &c.

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The Defenthat the Lands are Ancient Demesne. \* Parcel or triable at Common Law: it Lands are Ancient Demesne, held of the Manor of Bray, which is Ancient Dcmeinc.

Et predid' Sim' Winch per Johannem Sanddant pleads, well attoan' fuum benit & Dicit quod tenementa in narratione predict superius specificat' sunt a tempoze cujus contrarium memoria homis num non eriffit fuerunt \* Parcell manerii de Bray in com' predic de quo quidem manerio not Parcel is Dom' Rer feilit' eft in jure cozone Duodque manerium predig' est de antiquo dominico coron' dom' Regis Duodque tenementa predia' funt placitabilia & placitat' fuerunt in curia should have manerii pzedia' per parbum bzeve dom' Reg' been, that the de reas clauso a tempoze cujus contrarium memozia hominum non existit & hoc parat' est verificare prout curia consideraverit, ac. unde petit judicium si curia domini Regis hoc plas citum inde cognoscere velit, ac.

Demurrer.

Et predictus Thomas Barker dicit and ver aliqua per predict' Simonem Winch superius placitando allegat' curia domini Regis hic a cognitione placiti predict' habend' precludi non debet quia dicit quod placitum predia' per ips fum Simonem modo & forma superius placitat materiaque in codem contenta minus sufficien' in lege existunt ad predictant curiam domin' Reg' nunc hie a cognitione placit' predict, pamateriamque in eadem content' idem Thomas Barker necesse non habet nec per legem terre tenetur aliquo modo respondere a hoc parat' est verificare unde pro defeau sufficien' respons' in hac parte idem Thomas petit judicium & terminum fuum predia adhuc venturum de & in tenementis predictis cum pertinen' una cum damnis suis occasione transgression' & ejection' firme predicte fibi adjudicari, ec. Et pro caus lis mozationis in lege super placitum ill' idem Thomas jurta formam statuti in hujusmodi cas In inde nuper edit' & probis' offendit & curie bic demonstrat has causas subsequentes bides licet eo qued predict' Sim' in placito suo pred' non

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non offendit curie his nes allegabit appo the Ancient Denementa predici cum pertin' in narratione pres mesne. Dict' mentionat' nec aliqua eozum parcell' tes nentur de pred' domino rege nunc de manes rio suo de Bray predict' & quia placitum pred' est insensibile incertum & caret fozma.

Et predict' Sim' dicit quod placitum pres Joinder in bidum per ipfum Simonem modo & fozma plas Demurrer. citat' materiaque in eodem content' bon' & fufficien' in lege existent ad predict' curiam dicti Dom' Reg' nunc hic a cognitione placiti pre-Did' pzecludend' quod quidem placitum mas teriamque in eodem content' ipse idem Sim' parat'est verificare e probare prout curia, ec.

The Plea was adjudged not good, and the Defendant was ordered to answer over. O'c:

#### (8.) Countess of Plymouth versus Samuel lames.

Wigorn' ff. S J Other comes Plymouth, &c. Ancient De-Chillingworth Robert' Naile & Mariam ur' ejus, a Writ of ec. quod fint cozam justiciariis nostris apud Deceit, &c. Westm' a die pasche in 15 dies ad respondend' see the Represat' Comiti de placito quare cum idem Comes port of this modo seisitus existit & per decem annos jam Case, Tic. ult' elapsos seilit' fuit de & in manerio de Ancient De-Bromesgrove in Com' tuo in dominico suo ut de mesne. (D.) feodo quod quidem manerium est & a toto tem- pl. 8. pore cujus contrarii memozia hominum non ers That the istit suit de antiquo dominico cozone regie Ans Plaintiss was gliz, &c. ac omnia terre & tenementa que de of the Macodem manerio tenentur a toto tempoze supras nor of Dicto placitabilia & placitat' fuerunt in curia Bromefgrove, manerii illius per parbum brebe de recto & non which is alibi nec aliter secundum consuetudinem eius Ancient dem curie a toto tempoze supradido ibidem Demesse. ulitat' predict' Samuel' Henricus Robertus &

mesne, &c. a Writ of Deceit, &c.

\* 'Tis the better Way to alledge Notice. See lib. Ward and Kidgin's Case there was none. The Defendants levied a Fine in the Common Pleas at Westminster : Of four Meffuages, and eight Acres of Land; whereof two Meffinages and 3 Acres are Ancient Demeine held of the

Ancient De- Maria ut' ejus, &c. pzemissozum \* non ignari machinan' eundem Comit' de proficuis curie manerit predicti callide & subbole becipere & Defraudare quidam Finis fe levavit in curia Domini Will' Tertii nuver Regis Angl' De Banco hie seilt' apub Westm' in Com' Mid' tozam Georgio Treby Ed' Nevill Johan' Powel & Johan' Blencow tunc jufticiar' ipfius nuper Regis de Banco & aliis iplius nuper Regis fidelibus ibiplitand' 303, bem. presentibus a die sancti Mich' in tres septhere is No- timanas anno reg' fui 12 inter prefat' Sam' & tice ; but in Hen' queren' & prefat' Rob' Neale & Mariam ur' ejus, Ac. befozcien' be quatuoz meffuagiis & odo acris terre cum pertinen' in Hanbury Droitwich & Bromesgrove in Com' suo unde duo mes fuagia & tres acre terre cum pertin' in Bromefgrove predict' funt & a tempore levationis finis pred' a per totum tempus supradid' fuerunt tent' de manerio predicto a a toto temp poze supradicto usque lebationem finis pred' in curia manerii illius secundum cons' ejustem manerii placitat' & placitabilia fuerunt cuius quidem finis pretertu eadem duo melluagia & tres acre terre cum pertin' in Bromesgrove pred' liberum tent'um f ad communem legem placis tat' & placitab' devenerunt in deceptionem cur' vzed' a av expered' iplius Comitis quoad vzedid' buo meffuagia & tres acre terre cum pertin' in Bromesgrove predict periculum manifestum ad dampnum iplius Comitis 40 l. ut dicitur, &c.

Manor of Bromesgrove: And are pleadable only in the Court of that Manor, but did not set forth before whom such Court was kept : But by the Fine are made Frank-fee.

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### (9.) Chafin versus Betsworth.

Homas Betsworth nuper De Alton Ancient Dein com' predict' Butcher attas mesne. Ar' de placito quare bi & armis clausum ips port of this fins Thoma Chafin apud Alton Westbrook in Case Tit. com' predic' fregit & ibidem ererit & ulitabit Ancient Deunum stabulum Anglice a Stall & alia enozmia mesne. (B) ei intulit ad grave damnum ipfius Thoma Cha- pl. 10. fin & contra pacem domini Regis nunc, &c. & unde idem Thomæ Chafin per Ed' Fisher attoan' fount queritur quod predictus Thoma Betsworth 21 Die Julii anno regni Dom' Caroli fecundi nunc Reg' Angliæ 26 bi & armis, &c. clausum iplius Thom' Chafin wocat' the Market-Place aput Trespass for Alton predict' fregit & abtunc & ibidem ererit building a & usitavit unum stabulum Anglice a Stall & Stall in a alia enormia ei intulit, ec. ad grave damp' ip, Marketfins Tho' Chafin & contra pacem, &c. unde ibem place. Thom' Chafin vicit auod deteriozatus est & damps num habet ad valentiam 201, & inde producit fedam, &c.

Et predictus Thomas Betsworth per Hen' Col- Plea in Bar. lier attoan' suum ven' & defend' vim & injuriam quando, ec. e quoad benire bi e armis feu quicquid qued eft contra pacem bid' Dom' Reg' idem Thomas Betsworth dicit quod ipse non est inde culpabilis & de hoc ponit se sus per patriam & predictus Thomas Chasin similiter & quoad residuum transgression' predict' superius fieri suppositum idem Thomas Betsworth dicit quod predict Thomas Chafin action' fuam predict' inde versus eum habere non des bet quia dicit quod \* manerium de Alton in co: \* That the mitatu Southamp' predict' est de antiquo domis Manor of nico corone Dom' Regis Angliæ quodque ipse Alton is Anidem Thom' Betsworth predicto tempore quo, ec. cient De-

suppo, meine.

meine.

That there is a Market there every Saturday. And by the Custom of the Manor, the Tenants are to be quit of Stallage.

\* The Cuftom is laid pro rebus & bonis suis vendendis.

That he sell Flesh.

not within the Custom, and for this Cause the Plca was held ill.

Special Demurrer.

Ancient De- supponitur transgressio predict' fieri & diu ans tea feilit' fuit & adhuc feilitus eriffit de & in dimidio unius acre tent' cum pertinen' in Alton predict' in dominico suo ut de feodo tent' de manerio predicto Duodg; infra manerium predictum eft & a tempore cujus contrarii memozia hominum non eriffit fuit commun' mers cat' tent' vie sabbati in qualibet septimana in prevido loco in quo, ec. bocat' the Market-place quodque infra manerium predictum a toto tempoze supradicto hacenus ulitat' e approbat' has betur & a tempoze cujus memozia hominum non existit fuit quedam antiqua consuetudo infra idem manerium quod omnes & linguli tes nentes ejustem manerii quieti essent & esse bebeant de Stallagio in mercat' predict' pro aliquibus bonis & \* rebus fuis bendend' & eris gere a usitare consueverunt qualibet die mercat' Anglice Market-Day Stabulum Anglice a Stall in mercat' predict' de tempore in tems pus ad libitum suum pro rebus & bonis suis vendend' & idem Thomas Betsworth ulterius Di= cit auod iple idem Thom' Betsworth predicto built a Stall tempoze quo &c. eriftens lanius & fic ut prein the Mar- fert' tenens manerit predic' in clauso iplius ket-place to Thomæ Chafin predid' wocat' le Market-place eriften' commun' mercat' predidum intrabit adtunc & ibidem erexit super terram ibis \*But did not bem Stabulum fuum pred' ab vendend' \* carfay fuam, to nem predict tempore quo, ac. eriften' die mercat' Anglice Market-Day prout ei bene licuit que est eadem fractio claust predict & erectio # usitatio stabuli predict' unde predict' Thomas Chafin superius se modo queritur & hoc paras tus eft berificare unde petit judicium fi paes bid' Tho' Chafin actionem fuam predict' berfus cum habere debeat, &c.

Et predict Thomas Chafin quoad placitum predict' Tho' Betsworth quoad residuum transgr' paedia' superius fieri suppolit' & superius in barram placitat' Dicit quod placitum illud & materia in eodem contenta minus sufficiens in lege cristiant ad ipsum Thom' Chasin ab

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actione sua predicta versus prefat Tho' Betf- Ancient Deworth habend' precludend' quodg; ipfe ad plas meine. citum illud modo & fozma placitat' necesse non habet net per legem terre tenetur respondere Et hoc parat' est verificare unde pro defectu sufficien placiti predict' Tho Bersworth in hac parte idem Thomas Chafin petit judicium & damna sua occasione transgr' predict' sibi ada adjudicari, &c. & pro causis morationis in lege idem Tho' Chafin secundum formam statuti in hujulmodi calu edit' & provis' offendit curie hic causas subsequentes videlt' quod in placito predicto non allegatur quod Thomas Betsworth tenet de domino manerii predict' nec quoeristit de predict dimidio acre terre tent' de manerio predia' quodque idem placitum eft informale & incertum ac etiam quod consuetudo predict' in placito pred' T. B, allegat' est bas cua & contra legem.

C 3 (10.) Savery

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## (10.) Savery versus Smith.

Ancient De- Wilts. ff. TOhannes Smith Sen' nuper De Highmefne. worth in com' predict' Mason & Jo-

See the Rcport of this Case in Tit. Ancient Demesne (B) pl. 9.

hannes Smith Jun' nuper de Highworth predict' Mason summoniti sucrunt ad respondendum Mariæ Savery bid' be placito quare ceperunt averia videlt' buos pozcos ipsius Mariæ & cos injufte betinuerunt contra bad' & plegios, ec. & unde eadem Maria per Will' Quintin attoan' suum queritur quod pred' Johannes & Johannes 13 die Augusti anno regni Dom' Reg' nunc 36 apud Highworth in quodam loco vocat le Street ceperunt averia vivelt' duos pozcos ipfius Mariæ e eos injuste detinuerunt contra vad' e plegios quousque, ec. Et unde dicit quod deteriozat' est & dammum habet ad valentiam decem li bearum & inde peoducit fedam, &c.

The Conufance,

The Defen-Fo. Blomer, who was feized of an Ancient Market in Highworth.

And preferibed for Toll to be taken there-

Et predict' Johannes Smith Sen' & Johannes Smith Jun' per Rad' Granore attorn' fuum ven' & defend' vim & injur' quando, &c. & ut bal-livi Johannis Blomer Ar' bene cogn' captionem pred duorum porcorum in pred loco bocat dants justify le Street in quo, ec. & juste, ec. quia dicunt as Bailiffs of quod diu ante predict tempus in quo, ec. necnon eodem tempoze quo, ec. predict' Johannes Blomer fuit seisitus in dominico suo de quodam antiquo communi mercat' die mercurii in qualibet septimana apud villam de Highworth predict tent' pro emptione a benditione ibidem omnimodozum bonozum mercatozum & aberiorum per aliquam personam vel aliquas personas ad libitum fuum Duodque idem Johannes Blomer & omnes ill' quozum fatum iple ut prefertur habuit be & in mercat' predicto cum pertin' a predicto tempore cujus contrarit mes mozia hominum non eriffit habuerunt & reces perunt ac habere & recipere uli fuerunt & con-**Sueverunt** 

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fueberunt unum obolum pao tolneto pao quo Ancient Delibet pozco in mercat' pzedido bendito per emps mesne. tozes hujulmodi pozcozum solvendum ac fi bujusmodi emptoz recusaret solvere tolnetum pres dictum tune idem Johannes Blomer ac omnes illi quozum statum ipse predict Johannes Blo. And to dimer ut prefertur habuit de & in mercat' illo a ftrain, if not predicto tempore cujus contrarii memoria ho- paid. minum non existit per se ballivos vel servis entes suos us fuerunt & consueverunt hujusmodi pozcum vel pozcos fic empt' & pzo quo feu pao quibus tolnetum paedidum folbi recufat' fozet diffringere & detinere pzo tolneto pzevide lie solvi recusato e itoem Johan' Smith Sen' & Johannes Smith Jun' ulterius vicunt quod pres Did Johannes Blomer de mercat predicto lie ut That the prefertur feilit' eriften' predicta Maria ante pres Plaintiff dia tempus gup, ac, scilt' die mercurii eodem bought two per Kegis Caroli secundi 36 supadia apud faid Market, Highworth predia in mercat predict Johan Blomer adfunc & ibidem tent' emebat de quas dem persona eisdem John' Smith Sen' & John' Smith Jun' ignota predict' duos porcos in nars gatione predict pecificat' Duodque iidem Jo- And that the hannes Smith Sen' & Johannes Smith Jun' post Defendants predia' emptionent porcorum predia' ante being Serpredict' captionem porcorum illorum feilt' eod' vants of the 13 die Augusti anno 36 supradia' eisdem Jo- said Fo. Blohan' Smith Sen' & Johan' Smith Jun' abtune mer, and Colepiten' servient' previent John' Blomer & cole lectors of his lectors thus fug tolness infra manerium nec Toll in Highlectozibus suis tolneti infra manerium pres worth Mar-victum contingen apud Highworth predict in ket, did by predicto loco in quo, ec. ac in mercat' illo ad his Comtunc e ibidem tent' per preceptum predicti Jo- mand, and hannis Blomer Demandaverunt pao codem Jo- for his Use, hanne Blomer de predicta Maria unum denas demand the rium pro tolneto predicto pro predictis duodus Toll of the pozcis bidelt' unum obolum pao quolibet eozum. Plaintiff, bem pozcozum quod solbere predicta Maria ad which she retunc & ibidem penitus reculabit & quia predia' fused to pay, unum denarium pro tolneto predict ut preferstur prefato John' Blomer pred' tempore quo, ec. aretro

Ancient De- aretro fuit & insolut' itoem Johannes Smith Sen' mefne. & Johannes Smith Jun' ut ballivi predicti John' Blomer bene cogn' captionem pozcozum pzed' Thereupon in predicto loco in quo, ec. infra mercatum pres the Defendants, as Bai- bid' & jufte, &c. pao tolneto predicto eidem John' Blomer insolut', &c. liffs of the

Said Fohn Blomer, juflified the Taking, Oc.

replies.

That she is Tenant of Land.

Et predicta Maria Dicit quod pred' J. S. Sen' & J. S. Jun' ratione preallegata ut ballivi prediai John' Blomer captionem duozum pozcozum predia' in prediato loco in quo, &c. justam cogs The Plaintiff nofcere non Deb' quia Dicit quod ipfa eadem Maria tempoze quo, ec. fuit & adhuc eft tenens & inhabitans de manerio de Hanningdon in com' pzedid' Duod quidem manerium eft de antithe Manor of quo Dominico cozone Domini Regis Anglie Hanningdon. quooque tenentes & homines de antiquo domi-\*(i.e.) In all nico sunt quieti de tolneto in omnibus \* locis Places where infra hoc regnum Anglia Et hoc parata eft bes they are Te- reficare unde er quo predict' J. S. Sen' & J. S. nants of fuch Jun' captionem duozum pozcozum pzedic in predict' loco in quo, ec. superius cogn' eadem Maria pet' judicium & damna sua, ec.

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### (11.) Wells versus Cotterell.

Glouc, ff. HEnricus Cotterell & Gerardus Pope By-Laws. fummoniti fuerunt ab respons See the Rebendum Johanni Wells Gen' de placito quare ces port of this perunt averia ipsius Johannis & ea injuste Des Case in Tir. tinuerunt contra vad' & plegios, &c. Et unde By-Laws. idem Johannes per Will' Bagnell attoan' suum (B) pl. 3. queritur quod predict' Henricus & Gerardus 21 Replevin. Die Aprilis anno regni Dom' Regis nunc 32 apud paroch' de Leigh in quodam loco ibidem vocat' le Home-Court ceperunt aperia ipsius Johannis videlt' quatuoz vaccas & ea injuste des tinuerunt contra bad' e plegios quoufque, ec. unde dicit quod deteriozat' est & damnum has bet ad valentiam 20 l. \* inde producit sec= tam, ec.

Et predicti Henricus & Gerardus per Jacobum Conusance. Simpson attorn' summ ben' & defend' bim & injuriam quando, ec. ut ballivi Will' Dowdes- By the Dewell Ar' bene cogn' captionem averiogum pres fendants, as dictozum in predicto loco in quo, ec. & jufte, Bailiffs of ec. quia dicunt quod idem locus in quo sup. Wm. Dowdef-ponitur captio aberiozum predict fiert contis well. net a predicto tempore quo supponitur captio averiozum predict' fieri continebat in se duas acras terre cum pertinen' in Leigh predict' in quadam villa ibidem vocat' Evington quodque Diu ante predict tempus quo, ec. \* Decanus & \* Dean and capitulum collegiatum Sancti Petri Westm' fues Chapter of runt seiliti de manerio de Durhurst alias Dore- Westminster hurst alias Playstow cum pertinen' in com' seiled in Fee pred infra precindum cujus quidem manerii of the Matam predia locus in quo, &c. quam villa de nor of Dur-Evington predicta in predict parochia de Leigh burft, &c. in com' predid' funt & predido tempore que, Precinas

whereof was the Place where, &c. and also the Vill of Evington in the Parish of Leigh.

By-Laws.

that the Commoners in Evington have used to repair a Bridge.

\* Another

the Steward

of the Ma-

Consent of

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By Laws.

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† And to

impose Pe-

nalties for

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ac. fuerunt in dominico suo ut de feodo in jure Ecclesse sue predicte infra quod quidem manerium habetur & a tempoze cujus cons trarium memozia hominum non eristit habes \* Custom in batur talis \* consuetudo videlt' quod omnes tes the Manor, nentes & occupatozes terrarum & tenementos rum in predict villa de Evington habentes communiam pasture ad tenementa sua ibidem res specive specian' & pertinen' in quadem pars cella paftur' vocat' Incham Common infra manerium pzedia' a tempoze cujus contrarii mes mozia hominum non existit usi fuerunt & consues verunt facere erigere constituere & manutenere quendam pontem Anglice bocat' Micknell Bridge in Evington predict' in parochia de Leigh predid' in predicta parcella pasture ibidem vocat Incham Common pao usu & beneficio tenentium manerii paedia habentium communiam pas fure in predicta pastura bocat Incham Common Duodque infra manerium predict' habes tur & a toto tempoze cujus contrarii memozia hominum non existit habebatur talis alia \* con= suetudo videl' quod seneschallus curix Baron' mas Cuftom, that nertt predicti pro tempore eriftens cum affensu & consensu homagii manerii prædict' ibidem ju nor, by the rat' & onerat' vel majoz' par' eozundem ad curiam Baron' manerii illius de tempoze in the Homage, tempus fecit & constituit & usus fuit & cons suevit facere & constituere quandocunque nes celle fuillet rationabiles leges Anglice By-Laws &c. which is ozdines & constitutiones & + imponere penalis ill; because tates & fozisfacturas super quemlibet tenentem all By-Laws vel occupatozem vel tenentes vel occupatozes aliquarum terrarum vel tenementozum infra pzes made by the cindum ejusoem manerit contra hujusmodi les ges ordines & constitutiones delinquentes pro bonis gubernatione & ozdinatione infra pzes cindum manerii illius habend' & conservand'

Laws, to be forfeited to the Lord. # The Lord of the Manor prescribes to diffrain for the Forfcitures.

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ac omnes illi quozum statum inst tidem deca: By-Laws. nus & capitulum habuerunt in manerio predicto cum pertinen' a tempoze cujus contrarit memozia non eristit ust fuerunt a consueves runt p20 omnibus hujusmodi penalitatibus & fozisfaduris lic impolitis & fozisfadis diffrins gere averia illius contra hujusmodi leges 02= dines & constitutiones delinquentis infra precindum manerii pzedidi super pzesentation hus julmodi offens' & delict' ad curiam Baron' mane: The Offence rii pzed' lic ut pzefeztur tentam & tenend' 102es being predictique decano & capitulo de manerio predicto sented at the cum pertinen' fic ut prefertur feilit' eriften' per Court-Baquandam indenturam geren' dat' 20 die Junii ron. anno regni Domini Regis nunc 15 factam apud parochiam de Leigh predict' inter ipsos decanum & capitulum per nomina Johannis The Dean Dolbon facre theologie professoris decant colles and Chapter giat' Sancti Petri Westin' & capituli ejustem demised the Eccleste er una parte & quendam Ri'cum Dow- faid Manor deswell Ar' jam besund' patrem ipsus Will' to Richard Dowdeswell, per nomen Ric' Dowdeswell be Poolfor the Lives Court in com' Wigorn' Ar' er altera parte cus of Wm. and jus quidem unam partem sub communi sigillo Ch. Dowdestille Court in Court in com' Ch. Dowdestill Court in Court in control of Ch. Dowdestille Court in Court pacbidi becani & capituli figillat' iibem Hen- well, and ricus & Gerardus hic in curia proferunt cujus Richard the dat' est eisdem die a anno ult' mentionat' Son of Wm. Itdem decanus & capitulum er unanimi als Dowdeswell. fensu & consensu pro se & successoribus suis dimifer' concesserunt & ad firmam tradiderunt prefato Ric'o Dowdeswell inter alia manerium predict cum pertinen' habend' a tenend' eidem Ric'o Dowdeswell herevibus a assignatis suis a figillatione & deliberatione ejuscem indenture pro a duran' naturalibus vitis predict' Will' Dowdeswell & cujusoam Caroli Dowdeswell als terius filii predict' Ric' Dowdeswell & cujus dam Ric'i Dowdeswell gen' filii ipsus Will' Dowdeswell a pzo a duran' vita diutius eorum viventis prout per candent indenturam inter alia plenius apparet virtute cujus quis com dimissionis & concessionis pred Richardus

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By-Laws.

By Virtue whercof Richard the Fa-And died feifed, Oc.

Dowdeswell pater fuit seisitus de manerio pae dicto cum pertinen' in dominico suo ut de li bero tenemento pro termino vitarum predic Will' Dowdeswell Coroli Dowdeswell & Ric'di ther was fei- Dowdeswell filit ipsius Will' Dowdeswell & bite sed for Life Diutius eozum viventis & fic inde feilitus ex of Wm. &c. iften' predict Ric'us Dowdeswell pater pollea scil' 13 die Septemb' anno regni Domini Regis nunc 25 apud paroch' de Leigh predict' de fali statu suo seisitus obiit post cujus moztem manerium paedid' cum pertinen' descendebat eis dem Will' Dowdeswell ut filio & heredi pres bid Ric'di Dowdeswell patris per quad idem Will'us postea & ante predict' tempus quo, ac. in manerium predict' cum pertinen' intravit & fuit & adhuc est inde feilitus in dominico suo ut de libero tenemento pro termino vitarum iplius Will' Dowdeswell & Caroli Dow-deswell & Ri Dowdeswell filti & vita diutius eozum viventis & fic inde feilit' eriften' pofea & ante predict' tempus quo, &c. ad cu riam baron' iplius Will' Dowdeswell manerii fui predicti tent' pro manerio predicto apud manerium illud 21 die Aprilis anno regni dicti Dom' Reg' nunc 31 \* per tunc homas gium curie predict' feilt' Edmundum Smith gen' Johannem Beal Thomam Cox & Thomam Butt tenentes manerii pzedia' ad inquirendum de hiis que ad eandem curiam pertinuerunt adtunc & ibidem jurat' & onerat' cozam Thoma Pury gen' tunc seneschallo curie baronis predia' prelentat fuit quod bregia, bous pocat' Micknell Bridge in Evington predict' in parochia de Leigh predict' in predicta parcella pasture ibidem bocat' Incham Common irres parat' fuit Joeo adtunc per seneschallum pres did' er allensu & consensu predicti homagii curie predict' † Dedinatum fuit quod inhabis nance or By- tantes de Evington predict qui habuerunt com-

muniam in predict' parcella paffure bocat' In-

cham Common facerent locarent & erigerent

aut causarent fieri locari & erigi sufficientem

\* The Homage prefent, that the Bridge was out of Repair.

† The Ordirepair the Bridge,

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pontem ibidem ante 24 diem Maii func pzor' By-Laws. fequen' aut aliter + fozisfacerent & folverent + or to forbomino manerii predici quinque libras legalis feit 5 1. monete Angl' Et itoem Henricus & Gerardus ulterius dicunt quod predice' Johannes Wells That the Depredicto tempore quo, et. at predicto 21 die fendant is an Aprilis anno 31 supradicto & diu antea & po. Occupier of fea fuit & adhuc est inhabitans & occupatoz a Messuage, unius messuagii 20 acrarum terre 20 acras and twenty unius meduagit 20 acrarum tette 20 acras of rum prati & 20 acrarum pasture cum per Acres of tinen in Evington predict in parochia de vington. Leigh pred' infra precindum ejustem manerit And had t habuit communiam in predict parcella pas Common in ffure vocat' Incham Common Et postea & ante the Place predict' 24 diem Maii anno 31 supradicto scilt' called In-22 die Aprilis anno 31 supradicto apud pas cham Comroch' be Leigh predidam predid' Johannes Wells mon. & inhabitantes ville de Evington pred' habue: And had Norunt notitiam ogdinis paedia' fic ut prefertur tice of the fade Quodque ad curiam baronis predicti faid Ordi-Will' Dowdeswell manerit sui predict' tent nance or Bypro manerio predicto apud manerium illud 16 At a Courtdie Octobris anno 31 supradicto per tunc Baron held \* homagium curie pred' bivelt' per Edmundum for the Ma-Smith Johannem Beal Thomam Cox Thomam nor Newman Will'um Sutton Thomam Greenway & \* The Ho-Thomam Butt tonentes manerii predict ad in mage prequirend' de hiis que ad manerium illud per: fent, that the tinuerunt abtunc & ibidem jurat' & onerat' Bridge was cozam Ric'do Dowdeswell Ar' tunc seneschall' not repaired. curie baronis pred' presentat' fuit quod inhabitantes de Evington pred' non fecerunt vel locaverunt vel causallent ficri & locari suffic cientem pontem in predicta villa de Evington predict' in pred parcella pasture ibidem bocat' Incham Common ante predic' 24 diem Maii anno 31 supradicto secundum predict ordinem in curia manerii pred fent pro manerio illo predia' 21 Aprilis anno 31 supradicto ut pres Whereupon fertur fadum Db quod predict pena quinque 51 was forlibrarum eitem Will'o Dowdeswell De manes feited to the rio pzedido cum pertin' in fozma pzedid' fet Lord of the

By-Laws.

fendants, as Bailiffs of justify the

Plea de injuria fua pro-

fit' eriften' fozisfada fuit Ct quia pzedid' quin: And because que libre predicto tempore quo, ac. eidem Will'o Dowdeswell fuerunt insolute tidem Henricus & paid, the De- Gerardus ut ballivi predict' Will' Dowdeswell bene cognoverunt captionem averiozum pres vid' in predicto loco in quo, &c. infca pres the Lord of cind' manerii predic' & juste, &c. pro odo-the Manor, gin' folidis de predic' quinque libris de pena predicta eidem Willielmo Dowdeswell sic Taking, &c. fozisfat' & aretro eriften' & non folut', &c.

Et predic' Johannes Wells Dicit quod pre: Dig' Henricus Cotterell & Gerardus ratione pres pria absq; &c. aliegata ut ballivi pred' Will' Dowdeswell cap: tionem aberiogum predict' in predicto loco in quo, ec. justam cognoscere non debent quia Dicit quod predict' Henricus & Gerardus De iniuria sua propria e absque aliqua causa per infos superius allegat' predicto 21 die Aprilis anno 32 supradido apud predid parochiam de Leigh in predicto loco vocat' le Home-Court ceperunt aberta predicta tplius Johannis & ea injuste definuerunt contra vad' & ples gios queusque, ac. prout ipfe idem Johannes fuperius versus cos queritur & hoc petit quod inquiratur per patriam.

Demurrer General.

Et predicti Henricus & Gerardus Dicunt quod predict placitum predict Johan Wells fupes rius in barram cognitionis pred' placitatum materiaque in codem contenta minus fuffis tien' in lege cristant ad tysos Henricum & Gerardum ut ballivos predict' Will' Dowdeswell a justa cognitione captionis averiozum predidozum in predicto loco in quo, ec. precludend' quodque ipli ad placifum illud modo & forma placitatum necesse non habent nec per legem terre tenentur respondere Et hoc pas rati funt berificare unde pro defectu fufficientis placiti iplius Johan' Wells in hat parte tibem Henricus & Gerardus petunt judicium & retoan' averiogum paedid' una cum Damnis, ec. fibi abindicari, ec.

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Et predictus Johannes Wells er quo iple fuf By-Laws. icientem materiam in lege in placito suo Joinder in predicto ad predict' Henricum & Gerardum ut Demurrer. ballivos predicti Will' Dowdeswell a juste cognoscend' captionem predic' aberiorum in pres bido loco in quo, ec. precludend' superius als legavit quam iple paratus elt verificare quam quivem materiam predict Henricus & Gerardus non dedicunt nec ad eam aliqualiter res spondent sed verificationem illam admittere omnino recusant idem Johannes Wells ut paius petit judicium e damna sua occasione caps tionis & injuste detentionis averiozum pzedia' fibi adjudicari, ec. Et quia Justiciarii hic se advisare volunt de a super premissis prinsquam judicium inde reddant dies datus est partibus predict, Ac.

(12.) North

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# (12.) North versus Potter

Copyholders. Replevin, Report of this Cafe in (A) pl. 6.

Common by Suff, ff. HEnricus North nuper De Mildenhall com' Suffolk predict' Ar' fummonis tus fuit ad respondend' Johanni Potter de plastito quare cepit unum equum bocat' a Nagg &c. See the infins Johannis & eum injufte Detinuit contra bad' e rlegios, ec. Et unde idem Johan' per Ed' Colman attorn' fuum queritur quod predict Tic. Common. Henricus 18 Die Junii anno regni Dicti Dom' Caroli secundi nunc Regis Anglia, &c. 19 apud Mildenhall predict in quodam loco ididem bos cat' le Fenn cepit predici equum ipfius Johan' & eum injuste detinuit contra bad' & plegios quousque, ac. unde idem Johannes dicit quod des teriozatus est a damnum babet ad valenciam

The Plea or Cognisance.

That the ed 10000 Acres of Padenhall, of which the Delf being 100 Acres of Pasture was Parcel.

40 1. & inde producit sedam, &c. Et predict Henricus North per Franciscum Woodward attorn' ben' & befend' bim & injuriam quando, ac. Et ut ballibus cujusdam Place where, Henrici North Baronetti bene cognobit caps &c. contain- tionem equi predia in prediao loco in quo, ec. & juste, ec. quia dicit quod predict' locus vocat' le Fenn in quo supponitur captionem Aure in Mil- equi predicti superius fieri continet a predicto tempoze captionis equi illius continebat in se decem mille acras pasture cum pertinen' in Mildenhall predict' unde quidam locus bocat' le Delfe continen' centum acras pasture cum pertinen' pror' adjacen' cuidam alio loco ibidem vocat' le Brinke ex australi parte est & prevido tempoze quo, Ac. necnon a tempoze cujus cons trarium memozia hominum non existit fuit parcel que quidem centum acre pasture cum pertinen' sunt & predicto tempore captionis equi pred' fuerunt solum & liberum tenemens tum pzesati Hen' North Baron' pzopzium Et quia quia vedici' equus prefat' Iohannis Potter pre: Common by dicto tempoze quo, ac. fuit in predict' centum Copyhold-acris pallure cum pertinen' herbam ibidem ers. crescentem devascens & damnum eidem Henrico And the North ibidem faciens iple predict Henricus mos Freehold of do defendens ut ballibus predict Henrici North Sir Henry Bar' & per ejus preceptum predicto tempore North. quo, ec. equum predictum in predictis centum So justifies acris pasture cum pertinen cepit e district the Taking bamnum ibidem fic ut prefertur facientem, Damagedicium & retozn' equi pzed' una cum damnis mis' e expentis fuis per ipfum circa fedam fuam in hac parte fultentat' jurta formam fatuti in hujusmodi casu nuver edit' & provis'

übi adjudicari, ec.

Ct predid' Johannes Potter Dicit quod predid' Replication. Henricus North Ar' ratione pzeallegat' captionem equi predicti in predicto loco in quo, ec. ut ballibus pred' Henrici North Bar' jultum cognoscere non debet quia dicit quod pred' centum acre pasture cum pertinen' vocat' le Delse Confesses funt & predicto tempore captionis equi pred' that the fuerunt folum & liberum tenementum prefat' Delfe is the Hen' North Bar' prout predictus Henricus North Frehold of Ar' superius inde placifando allegabit sed idem Sir Hemy Johannes ulterius Dicit quod paedite centum North. acre pasture cum pertinen' vocat' de Delfe sunt t predicto tempore captionis, ec. necuon a to But that the to tempoze cujus contrarium memozia homi- Delfe is Parnum non eriffit fuerunt parcell' predicti loci cel of the bocat le Fenn & a toto tempoze predicto fue the Manor runt parcell' manerii De Mildenhall cum per of Mildenhall, tinen' in Mildenhall pzed' be quo quidem manerto pzed' Henricus North Bar' din antea Of which pred' tempus captionis, ec. necnon eodem tem: Manor Sir poze captionis, ec. fuit seisitus in dominico suo Henry North ut de fecdo quodque idem Johannes din ante is seised in predict' tempus captionem, ec. necnon eodem Fee tempoze captionis, &c. fuit & adhuc feilitus eristit de & in uno antiquo messuagio cum per And that the tinen' in Mildenhall pred' existente uno libes Plaintiff was

Fenn, and of

feised of an ancient Messuage in Mildenhall, being one of the Free Tenants of the faid Manor.

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That there

the Copyholders the fole and fe-Couchant not proper on a Messuage. Custom for the Copyholders, together with the Freeholders, to Feeding of the Delfe, Levan's Couchan' super eogum separal' cufor all their kumar' tenementa predicta quolibet anno ad Cattle (ex-

ments.

tus & servitia in dominico suo ut de feodo quedque sunt & a toto tempoze supradido fues runt in Mildenhall pzed' diversa antiqua mes fuagia eriften' ten'ta libera Angl' Freehold are Freehold Tenements que tenentur & a toto tempoze su Tenements, padicto tenebantur de manerio de Mildenhall and also Co- predicto in feodo simplici per separales reddipyhold Te- tus & servitia ejusdem manerii parcell' quod: nements held que funt & a toto tempoze supradicto fuer' inof the Manor fra Mildenhall pzed' Diversa antiqua mestuagia of Mildenhall. eriften' tenementa custumar' parcell' ejustem manerii concessa & concessabilia per dominum manerii pzed' pzo tempoze existentem ad bos luntatem Dom' fecundum consuetudinem manerii ejusdem per copiam rotulozum curie mas nerii predict' quodque separales tenentes pres Prescription dictozum tenementorum liberorum existen' de by the Free- eozum separalibus ten'tis seifit' in dominico hold Tenants suo ut De feodo & omnes ill' quozum statum to have with ipst separaliter habent in eisdem a toto tempoze supradico habuerunt fimul cum predici tenentibus predictorum custumar' meffuag' foparate Feed- lam & feparalem paftur' paedid' centum acras ing, &c. of rum pasture p20 omnibus averiis suis (pozcis the Delfe. ovibus & juvencis vocat' Northern Steers ex-\* Levant and ceptis) \* levan & cuban' super eozum respectiva libera tenementa predicta quolibet anno ad om= nia tempoza anni tanquam ad eozum separalia libera tenementa predid' fpedan' & pertinen' Duodque in codem manerio est & a toto tempoze supravido talis habebatur consuetudo quod separales tenentes predictorum melluagi custumar' fimul cum predict' liberis tenentibus habere ust fuere & consuevere solam & separalem pulturam predict' centum acrarum pas have the fole flure pro omnibus aberiis fuis (pozcis omni-

bus & juvencis vocat' Northern Steers exceptis)

cept Hogs, &c.) Levant and Couchant, on their Copyhold Tene-

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omnia tempoza anni tanguam ad eozum se: Common by paralia custumaria tent'i specian' & pertinen' Copyhold-Ipsoque Johanne sie de messuagio suo predicto ers. cum pertinen' in forma predict seisito existente idem \* Johannes ante predict' tempus captionis \* Whereupon predict poluit equum predict' in narratione he put in his verdida specificat eritten peopeium equum ip own Horse, fins Johannis Levan' & Cuban' fuper meffua: &c. gium fuum pzedia' in pzediais centum acris pasture cum pertinen' vocat' le Desse ad herbam ibidem tunc crescentem depascendum & equus predictus fuit predicto tempore captionis, ec. in eisdem centum acris palture cum pertinen' vocat' le Delfe herbam ibidem tune crescen' depascens quousque predict Henricus North Ar' predicto 18 die Junii anno reg-ni dici Dom' Reg' nunc 19 supradicto apud Mildenhall pzedid' in pzedidis centum acris pasture cum pertinen' vocat' le Delfe parcell' predict' loci bocat' le Fenn cepit equum pres dicti sohannis iplius & eum injuste definuit contra bad' a plegios quousque prout ipse ident Johannes superius versus eum queritur Et hoc paratus est verificare unde er quo predict Henricus North Ar' captionem equi predict' superius coan' idem Johannes petit judicium a damna sua occasione captionis a detentionis equi predicti fibi adjudicari, ec.

Et predict' Henricus North dicit quod plas Demurrer. citum predictum per predictum Johannem Potter modo a forma predict superius in barram ad cognitionem iplius Henrici predict' placitas tum materiaque in codem content' minus sufficien' in lege existent ad ipsum Henricum a retozn' equi predicti habend' precludend' ad quod idem Hen' North Ar' neceste non habet nec per legem terre tenetur aliquo modo res spondere Et hoc paratus est verificare unde pro defedu sukcien' placiti in barram in hac parte idem Henricus ut pains petit judicium e reforn' equi predicti una cum damnis mis a expendis suis predictis per ipsum in hac

parte

Common by parte sustentat' jurta fozmam statuti pzed' sibi Copyhold- adjudicari, ec.

ers.

Joinder in Demarrer. Et predictus Johan' Potter die quod placitum predict per predict Johan' Potter modo & forma predict per predict Johan' Potter modo & forma predict imperius in barram ad cognitionem predict Henrici predict placitatum materiaque in eodem content' bon' & sufficien in lege existent ad ipsum Henricum a retorn' equi predict' habend' precludend' quod quidem placit materiamque in eodem content' idem Johan' Potter paratus est beristicare & produce prout curia, &c. Et quia predict' Hen' North Ar' ad placitum illud non respondit nec ill' hucusque aliqualiter dedicti idem Johannes Potter ut prius petit judicium & damna sua occassione captionis & injuste detentionis equi predict' sibi adjudicari, &c.

(13.) Hoskins

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## (12.) Hoskins versus Robbins.

Cornub. ff. R Obertus Robbins gen' fummon' Common by fuit ad respondendum Olivero Copyhold-Hoskins de placito quare cepit averia iplius ers. Oliveri & ea injuste detinet contra bad' & ple: See the Regios, ec. Et unde idem Oliverus per Ric'um port of this Halfe attoan' fuum queritur quod ipfe pzebia' Cafe in Tit. Robertus 26 die Augusti anno regni Domini Ca. Common. (A) roli fecundi nunc Regis Anglia 22 in quo pl. 7. dam loco bocat' Emlands infra paroch' de Blif- In Replevin. land in com' pzed' cepit aberia iplius Oliveri (viz.) 16 boves pretii cujullibet eozum 41. quas tuozdecim juvencos pzetii cujullibet eozum 40 s. Ac. & ea injuste definuit contra bad' & plegios quousque, &c. unde idem Oliverus dis cit quod iple deteriozat' est & damnum habet ad valentiam 40 l. & inde producit sedam, &c.

Et predict' Rob' Robbins per Ed' Hoblyn at, The Conntorn' suum ven' & vefend' vim & injuriam sance. quando, &c. & ut ballibus Gabriel' Barker in mes Dicinis Doctozis & Lætitiæ Thislewaite Spinster bene cognobit caption' averiozum pzedia' in predicto loco in quo, ec. & juste, ec. quia dicit That the quod pred' locus in quo captio aberiorum Place where, pred' superius fieri supponitur vocat' Emlands &c. called continet in se necnon codem tempoze quo Emlands, captio aberiozum pzedia superius fieri suppoz contained nitur continebat in se quingentas acras terre 1000 Acres

500 acras moze cum pertin' infra pzedia in the Parish
parochiam de Blisland in com' pzedia que qui and were dem 500 acre terre e 500 acre more sunt nec Parcel of the non a tempoze cujus contravium memozia hos Manor of minum non eriftit fuerunt parcell' manerii Biffant, of de Blisland in com' predicto de quo quidem which Dr. manerio cum pertinen predicti Gabr Barker Barker, &c. & Latitia diu ante tempus quo supponitur caps was seized tio averiozum pzed' superius sieri in pzed' loco in Feo. D 3

Copyholders.

And so justifies the Taking the Cattle Da-

Common by in quo, et. necnon eodem tempoze quo, et. fuerunt feisiti in dominico suo ut de feodo & quia averia predicta predicto tempore quo, sc. fuerunt in pred' loco in quo, ac. herbam iplos rum Gabrielis & Lætitiæ nuper ibidem crescen' depascen' & damnum ibidem facien' idem Robertus ut ballibus predictorum Gabrielis & Lætitiæ predicto tempore quo, ec. bene cognoscit caps tionent averiozum predict in predicto loco in mage-fesant quo, et. & juffe, et. Damnum ibidem fic facien' Et hoc paratus est verificare unde petit judicium a retoen aberiozum predia una cum damnis mis' & expensis suis per ipsum circa sedam in hac parte apposit' jurta fozmam statuti fibi adjudicari, ec.

Plea to the Conusance.

there were ancient Coof Blisland.

\* Custom in the Manor for all the Copyhold Tenants forth what ing of Em-

lands all the Year, &c. † Excluding the Lord; this may be good by Custom.

Et predict Oliver Hoskins dicit quod pres dia' Robertus pro aliqua ratione preallegat' ut ballibus predictorum Gabr' Barker & Lætitiæ cap tion' averiozum predict' in predicto loco in quo ac. justam cognoscere non debet quia dicit That, Time quod infra pred' manerium de Blifland funt & out of Mind, a tempoze cujus contrarii memozia hominum non eriftit fuerunt diversa tenementa cultus maria parcell' manerii predict' ac dimista & pyholds held vimisibilia per copiam rotulozum curic mane of the Manor rii illius ad voluntatem Domini manerii pzedid pro tempore existentis secundum consues tudinem ejusdem manerii Duodque infra mas nerium predict' habetur & a toto tempore cus jus contrarii memozia hominum non eristit talis habebatur consuetudo quod omnes \* te= nentes cuffumar' tenementozum cuffumar' manerit de Blisland predict' habuerunt & habere consueverunt solam & separalem patturam in preview loco bocat Emlands in quo, ec. anthereof, (but nuatim & quolibet anno + per totum annum doth not fer ab eogum libitum tanquam ab tenementa fua custumaria pzebid' fpedan' Et pzebid' Oliver' Effates they ulterius dicit quod predic' tenentes cultumar' had) to have tenementozum cultumar' predict' parcell' mathe fole Feed- nerii predia' postea & ante tempus predia' cap-

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tionis averiozum pzedictozum scilt' 20 die Au- Common by gusti anno regni dicti Domini Regis nunc 22 Copyholdsupradicto apud Blisland predict' dederunt licen, ers. tiam prefato Olivero ad ponendum aberia predida in predicto loco in quo, ac. virtute cujus quidem Licentiæ pzedict' Oliver' postea & ante predict tempus captionis eogundem averiogum The License poluit averia predicta in predicto loco in quo, not fet forth ec. ad herbam ibidem tunc crescen' depascend' by Deed, for Due quidem aberia fuerunt in predicto loco which Reain quo, ec. herbam ibidem tunc crescentem son it was depasten' quousque predict' Robertus postea ill. scilt' predicto 26 die Augusti anno regni dicti Dom' Reg' nunc 22 supradicto in pred' loco vocat' Emlands infra pred' paroch' de Blisland pred' cepit averia pred' & ca injuste detinuit contra vad e plegios quousque, ec. prout pred Oliver superius versus eum queritur Et hoc parat' est verificare unde er quo paed Robertus captionem aberiozum predict' in predicto loco in quo, ec. superius cognovit idem Oliver' petit judicium & damna sua occasione caption' e injuste detentionis averiozum predicorum libi adjudicari, Ac.

Robertus Robbins protestando Replication. Et predict' non cogn' aliqua per predict' Oliver' superius in Barram placitata foze vera dicit ut prins quod ipse idem Robertus ut ballibus presati Gabr' Barker & Lætitiæ bene cognobit captionem abes riozum predig' in predigo loco in quo, ac. hers bam ibidem crescen' depascen' & damnum ibis dem facien' prout ipse idem Robertus per cognitionem fuam predict' superius inde allegabit absque hoc quod infra manerium de Blistand Traverse of predict' habetur seu a toto tempore cujus cons the Custom trarii memozia hominum non existit talis has for the Cobehatur consustudo quod omnes tenentes cultus pyholders to tenementozum custumar' manerii de have the fole Blilland predict' habuerunt seu habere consue: Feeding. verunt solam & separalem pasturam in pred loco in quo, ec. annuatim e quolibet anno per totum ann' ad cogum libitum tanquam ad tenementa sua custumar' predicta specian' mos Do & forma prout predict' Oliver' per Barram

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Copyholders.

Common by fuam superius inde supponit & hoc parat' est verificare unde ut paius petit judicium & res toan' averiozum paedid' una cum damnis mis lis & expensis suis in hac parte sustentatis jurta fozmam statuti pzedidi sibi adjudicari, Ec.

Rejoinder, and a Tender of an Iffue upon the Custom.

Et predict' Oliver' ut prius dicit quod infra manerium de Blissand habetur & a toto tems poze cujus contrarii memozia hominum non eristit talis habebatur consuetudo quod omnes tenentes cultumar' tenementozum cultumar' manerii pzedia' habuerunt & habere consueves runt folam & separalem pafturam in predicto loco in quo, &c. annuatim & quolibet anno per totum ann' ad eogum libitum tanquam ad ten'ta fua cultumar' predid' fpedan' modo & forma prout ipfe ibem Oliver' superius in barra ad cognitionem predia inde supponit & hoc petit quod inquiratur per patriam & pred' Robitus inde similiter Ideo preceptum est vic' quod venire faciat coram domino rege in Octabis fandi Hillarii ubicunque, &c. duodecim, &c. per quos, ec. & qui nec, ec. ad recogn', ec. quia tam, ac.

(14.) Grammer

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#### (14.) Grammer versus Watson.

Nott. fl. TOhannes Watson nuper de Farnseild sturbing him in com' predict' Yeoman attach' fuit therein. ad respondendum Jacobo Grammer de placito See the Retransgr' super casum, &c. Et unde idem Ja- port in this cobus per Carolum Nevill attorn' suum que Case in Tit. ritur quare cum quidam Will'us Child miles Common. 15 die April' anno regni Domini Caroli ses pl. 9. cundi nuper Regis Anglia, &c. tricelime Firma-That Sir rius fuit de & in manerio de Oxton Netherhall cum pertin' in com' Nott' predict' unde 20 was Farmer acre terre in Blydworth nunc in tenura pres of the Mafati Jacobi sunt & a tempoze cujus contrarit nor of which memozia hominum non existit fuerunt parcell' 20 Acres t a toto tempoze supravido dimista t dimis were Copysibilia per copiam rotulozum curie manerii hold. pzedidi per dominum ejusdem manerii bel per seneschallum suum curie manerit illius pro tempore existen' cuicunque persone quibuscunque personis ea capere volenti vel volentibus in feodo amplici vel ad terminum vite vel annozum vel aliter av voluntatem Dom' fecundum cons' manerii pzed' Cumque pzed' \* Will' Child & omnes illi quozum katum \* Nota, He iple habuit in manerio predict' cum pertin' pro was but a tenen' custumariis suis pred' 20 acrarum terre the Manor; habuerunt & a tempore cujus contrarii memo; therefore ria hominum non eristit habere consueverunt the Precommuniam pasture in quodam basto bocat' Ala- scription in more continen' 200 acres in Blydworth pred' pro him should omnibus averiis suis communicalibus in & sur pot be laid per pred' 20 acras terre cum pertin' Levan' & by a Que Cuban' quolibet anno omni tempoze anni tan: Effate, &c. quam ad predict' 20 acras terre cum pertin' for all his specian' e pertinen' Joenique Will' Child sic Tenants of

Common by Copyholders, &c. Case for di-

the faid 20

Acres Copyhold, to have Common in Alamore Waste in the Forest of Sbeerwood, without excepting Sheep, or the Fence-Month.

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Common by De manerio de Oxton Netherhall predit' cum Copyholders, &c. Case for ditherein.

Grant of the By Virtue Fce.

The Defendant put in his Cattle.

By Reason Plaintiff could not enjoy his Common in Alamore Wafte. &c.

pertin' in forma pred' possessionat' existen' ad curiam suam manerii sui predict' tent' apud Oxton predid' infra manerium predid' predido flurbing him decimo quinto die Apr' anno 30 supradicto per quendam Laurentium Athorp adtunc senaschal ium suum curie manerii pzed' per copiam ros tulozum curie manerii illius concessit eidem Jacobo pred' 20 acras terre cum pertinen' tes the Plaintiff, nendum fibi & heredibus fuis ad voluntat Do mini fecundum cons' manerit predicti Airtute whereof he cujus quidem concessionis idem Jacobus in preentered, and Dia' 20 acras terre cum pertin' intrabit & was feised in futt & adhuc existit inde seisitus in dominico suo ut de feodo ad voluntatem Domini secundum consuetudinem manerii pzedid Pzedidus tamen Johannes Watson premissorum non ignas rus sed machinans & intendens ipsum Jaco. bum de communia pasture in predicto vasto bocat' Alamore in forma predicta habend' minus juste impedire & de proficus sus inde totaliter deprivare postea scilt' 20 die Decemb' anno regn' dicti Domini Caroli secundi nuper Regis Anglia, ec. tricelimo quinto aberia bidelt' diberfos equos vaccas boves & bidentes suos in pre-Dicto vatto vocat' Alamore posuit ac herbam ibis dem crescen' cum averiis suis predict' depatt' suit conculcabit & consumpsit depasturation' conculcationem & confumption' herbe predict' in vedido vafto vocat' Alamore cum equis vaccis bobus a bidentibus predia' a prediao 20 Die Decemb' anno regni biai nuper Megis Caroli fecund' 35 supradico usque 20 diem Octob' ertunc paor' sequen' diversis diebus & vicibus continuando per quod idem Jacobus communiam fuam paffure predicte pro aberiis fuis pred' in & fuper predia' 20 acras terre cum pertin' Levan' & Cuban' in predicto bafto whereof the bocat' Alamore in tam amplo & beneficiali mos do prout ipfe preantea habuit & habere usus fuit ac de jure habere debuit & consuevit has

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num ipsius Jacobi 401. & inde producit sees Common by tam, &c.

Et predict' Johannes per Samuelem Coke at ers, &c. forn' summ ben' & defend' vim & injuriam Case for diquando, &c. & vicit quod predict Jacobus actio sturbing him nem fuam predictant inde berfus eum habere therein. non debet quia dicit quod bene & berum eft Plea in Bar. quod predic' Will' Child 15 Die Aprilis anno regni Dom' noftri Caroli fecundi nuper Res gis Anglia, &c. 30 Firmarius fuit de Oxton Ne. Confesses therhall cum pertin' in com' pred' unde pres that Sir Wm. Dide 20 acre terre cum pertinen' in Blyd- Child was worth nunc in tenura predicti Jacobi sunt & a Farmer of tempoze cujus contrarii memozia hominum the Manor, non existit fuerunt parcell' & dimista & dimis &c. sabilia per copiam rotulozum curie manerii And that the predicti per dominum ejusdem manerit bel 20 Acres per seneschallum suum curie manerit illius were Parcel pro tempore eristen' cuirunque persone vel qui thereof, and buscunque personis ea capere volentibus in Copyhold. feodo simplici ad terminum vite vel annozum vel aliter ad voluntatem Domini fecund' cons Prescribes suetubinem manerii pzediai Duodque pzedia' to have Will'us Child & omnes illi quozum fatum Common in iple habuit in manerio predicto cum pertinen' Alamore pro fe & tenen' suis custumar' pred' 20 acras Waste, for rum terre habuerunt & a tempoze cujus cons all Catrle, trarii memozia hominum non existit habere &c. not exconsueverunt communiam pasture in predicto cepting valto vocat Alamore continen' ducent' acras Sheep, nor terre in Blydworth pred' pro omnibus averis excepting the Fencefuis communicalibus in a fuper 20 acris terre Month. cum pertin' Levan' & Cuban' quolibet anno om: mi tempoze anni tanquam ad pzedid' 20 acras terre cum pertin' fpectan' & pertinen' Duodg; That Sir idem Will' Child fic de manerio predicto de Wm. Child, Oxton Netherhall predid' cum pertinen' feilit' at a Court, eristen' ad curiam suam manerii sui predicti &c. held by tent' apud Oxton predict' infra manerium pres his Steward, did predicto 15 die Aprilis anno 30 supradicto granted the faid twenty per Laurentium Athorp adtunc seneschallum suum Acres to the curie manerit illins concessiffet eidem Jacobo Plaintiff. predict' 20 acras terre cum pertin' tenendum libi & heredibus suis ad voluntatem Domini fecundum

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Copyholders, &c. Case for ditherein. By Virtue whereof he entered and was feifed. But the Defendant faith that the Archbishop of York before the Manor of Southwell : Of which a Meffuage and thirty Acres of Land were Parcel: And Copyhold Lands held of the faid Manor of Southwell.

Prescription laid in the Archbishop to have for his Tenants of the said Mcffuage and Lands Common in Alamore Walte.

Common by fecundum consuetudinem manerii pzedid' Mirs tute cuius quidem concessionis idem Jacobus in predict' biginti acras terre cum pertin' intravit a fuit a adhuc existit inde seisitus m sturbing him dominico suo ut de feodo ad voluntatem De mini secundum consuetudinem manerit pres viai prout predicus Jacobus per breve & tiar, ration' fuam predict' superius supponit Sed idem Johannes ulterius dicit quod Reverendus in Christo pater Richardus providentia divina Dominus Archiepiscopus Eborum Anglia Primat' & Des tropolitanus ante pzed' 20 diem Dec' anno regni dicti nuper Regis Caroli secundi 35 supradicto feilitus fuit de manerio de Southwell cum pertin' in comitatu predicto in jure Archiepisco Grant of the pat' sui unde unum meduagium 30 acre terre twenty Acres 10 acre pati & 30 acre pasture cum pertin' to the Plain- in Farnsfeild in com' predic' sunt & a tempore cujus contrarii memozia hominum non existit felied of the fuerunt parcell' in Dominico fuo ut De feodo Duodque predictum melluagium 30 acre terre 10 acre prati & 30 acre pasture cum pertin' funt & a toto tempoze supradido fuerunt tent' custumar' predicti manerii de Southwell & die milla & dimisibilia per copiam rotulozum curie manerii de Southwell pzedict' per Domis num manerii illius vel per seneschallum suum curie ejusoem manerii p20 tempoze eristen' cuicunque persone vel quibuscunque personis illa capere volenti vel volentibus in feodo fimplici vel aliter ad voluntatem Dom' secund' consuctuvinem manerii illius Et pzed' Johannes ulterius dicit quod pred' Archiepiscopus & omo nes predecessores fui & illi quorum fatum idem Archiep habuit in pred manerio de Southwell cum pertin' pro feiplis & tenentibus fuis cu: flumar' pred' mefluagit 30 acr' terre 10 acr' prati & 30 act' pasture cum pertinen' habues runt & a tempoze cujus contrarii memozia bos minum non eriffit habere consueverunt coms muniam pasture in pred' vasto vocat' Alamore p20 omnibus aberiis suis communicalibus in e super predia' messuagium 30 acras terre 10 acras prati 30 acras pasture cum pertin' Levan

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van' & Cuban' quolibet anno omni tempoze Common by anni tanguam ad predict' messuagium 30 acras Copyholdterre 10 acras patti 30 acras patture cum ers, &c. pertin' spedan' & pertin' Et predic' Archiepis Case for dicopus sic de manerio de Southwell predict cum sturbing him pertin' in forma predicta seisstus existen' ante predict' 20 Diem Decemb' anno 35 supradicto For all their scilt' ad curiam manerii pzedid' tent' apud mas commonable nerium illud 19 die Januarii anno regni Dom' out except-Caroli paimi nuper Regis Anglia, ec. 14 per ing Sheep, or Humfredum Tinall tunc seneschallum suum curie the Fencemanerit pzed' per copiam rotulozum curie Month. pred' manerit de Southwell concessit cuidam Grant of the Rob' Watson patri ipsius Johannis pred' mes said Messuagium 30 acras terre 10 acras prati 30 acras suage to Ro. pasture cum pertin' habend' & tenend' libi & Watson at a heredibus & assanatis suis imperpetuum ad Court held voluntatem Dom' secundum consuctudinem mas for the Manerit Airtute cujus quidem concessonis idem nor of South-Robertus ante predictum 20 diem Decemb' anno well. regni dici Dom Caroli secundi Regis Anglia, By Virtue ec. 35 supradicto in predict' messuagium 30 whereof the acras terre 10 acras prati & 30 acras pasture said Robert cum pertin' intravit & fuit inde seillt' in dos entered, and minico suo ut de feodo ad voluntatem Dom' was seised, fecund' confuetudinem manerii pred' & fic inde ". seisit' existen' idem Robertus ante predict' 20 diem Decembris anno regni didi nuper Regis Caroli secundi 35 supradido apud Southwell predict' obiit de tali statu inde seisit' post cue Rob. Watson jus quidem Roberti mortem predict' messuae died. gium 30 acre terre 10 acre prati & 30 acre patture cum pertin' descendebant presato Johanni ut filio & heredi prefat Roberti per quod And afteridem Johannes in predict melluagium 30 acras wards fobn terre 10 acras peati & 30 acras pasture cum his Son, the pertinen' intravit & fuit & adhuc est inde seisitus new Defenin dominico suo ut de feodo ad boluntatem dant, enter-Dom' secundum consuetudinem pred' manerii ed as Heir de Southwell Idemque Johannes sie inde seisti at Law to existen' ante vredict' 20 diem Decembris anno Robert. eritten' ante predict' 20 diem Decembris anno regni diai Dom' Regis Caroli secundi 35 pos And so he fuit equos bobes vaccas a bidentes in narras justifies the tione predicts superius specificat existen aberia putting in

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Copyholders, &c. Case for ditherein.

Common by iplius Johannis propria luper pred' melluagium 30 acras terre 10 acras prati & 30 acras pasture cum pertin' Levan' & Cuban' in predicto vafto vocat' Alamore ad herbam in eodem tunc flurbing him crescen' bepascen' & herbam predictam ibidem nuper crescentem cum averiis predict' depast' fuit conculcabit a consumplit depast' conculcas tion' a consumption' herbe pred' in pred' vasto vocat' Alamore cum equis bobus vaccis & bidentis bus predict' a pred' 20 die Dec' anno 35 ufg; 20 diem Octob' extunc paor' sequen' diverus diebus a vicibus continuando utendo communia sua inde Due quidem politio prediaorum equorum bo bum vaccarum & bidentium predict' in predicto valto vocat' Alamore ac depasturatio conculæ consumptio herbe predict ibidem catio cum equis bobus vaccis & bidentibus illis per tempus predidum eft eadem politio equorum bobum vaccarum & bidentium in pzedido vasto vocat' Alamore ac depasturatio conculcatio & consumptio herbe predict ibidem cum equis bobus vaccis & bidentibus perdia' per tempus pred' unde pred' Jacobus superius versus eum modo se queritur & hoc paratus est verificare unde petit judicium si predict Jacobus actio nem suam predictam versus eum habere des beat, &c.

Replication.

The Prefcription in Sir Wm. averred in the Manor of Oxton.

Et predict' Jacobus dicit quod ipse per aliqua preallegata ab actione sua predicta versus prefatum Johannem Wation habend' precludi non bebet quia ut prius dicit quod predict' Will'us Child ac omnes illi quozum statum ipse habet in manerio de Oxton Netherhall predid' cum pertinentiis pro fe & tenentibus Child is again cultumar' fuis pred' 20 acrarum terre iplius Jacobi in Blydworth predict habuerunt & a tems poze cujus contrarit memozia hominum non existit habere consueverunt communiam pasture in predicto vasto vocat' Alamore continen' 200 acras terre in Blydworth predict' pro omnibus averiis suis communicalibus in & super pred 20 acras terre cum pertinen ipsius sacobi in Blydworth predict' Levan' & Cuban' quolibet ans no omni tempoze anni tanquam ad pzedid' 20 ium

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acras terre cum pertin' specian' & pertinen' Common by prout idem Jacobus per breve & narrationem Copyhold-fuam predict superius supponit absque hoc quod ers, &c. predict Keverendiskmus in Christo pater Ric'us Case for di-providentia divina Dominus Archiepiscopus E- sturbing himbor' Angl' Primat' & Petropolitanus & omnes predecessores sui & omnes illi quorum stat' Traverse of idem Archiep' habuit in predict' manerio de the Prescrip-Southwell cum pertinen' po feiplis & tenentibus tion laid in fuis cultumar' pred' melluagii 30 acrarum terre the Archbp. 10 acrarum prati & 30 acrar' pasture cum pertinentiis pred' Joh' Wation in Farnsfeild pred' habuerunt & a tempoze cujus contrar' memos ria hominum non existit habere consueverunt communiam pasture in predicto vasto vocat' Alamore pro omnibus averiis fuis communicas libus in f super pred' messuagium 30 acr' terre 10 acras pati & 30 acras patture cum pertinen' predict' Johannis in Farnsfeild predict' Levan' & Cuban' quolibet anno omni tempoze anni tanquam ad predict' melluagium 30 acras terre 10 acras prati 30 acras pasture cum pertin' specian' & pertinen' prout predict' Jacobus Wation superius placitando allegabit & hoc paratus est verificare unde petit judicium & damna sua occasione pzemissozum sibi adjudi= cart, &c.

Et predict' Johannes ut prius dicit quod Rejoinder of predict' reverenous in Christo pater Ric'us pros the Defenvidentia divina Dominus Archiepiscopus Ebo-dant, who rum Paimas Angliæ & Petropolitanus & om maintains nes predecessores fui & omnes illi quorum the Prescripstat' idem Archiepiscopus habuit in pzedido mas tion laid in nerio de Southwell cum pertinen pao feipsis the Archbp. t tenentibus fuis cultumariis pzed' melluagii 30 acrarum terre 10 acrarum prati & 30 acras rum pasture cum pertin' pred' Joh' Watson in Farnsfeild predicto habuerunt & a tempore cujus contrarii memozia hominum non existit has bere consueverunt Communiam pasture in predido basto bocat' Alamore pzo omnibus averus fuis communicalibus in a super predict mels suagium 30 acras terre 10 acras prati 7 30 acras patture cum pertinen' pred' Johannis

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Copyholders, &c.

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Nife prius.

Common by in Farnsfeild pred' Levan' & Cuban' quolibet anno omni tempoze anni tanquam ad pzedic melluagium 30 acras terre 10 acras prati e Case for distrain die 30 acras pasture cum pertinen' special furbing him tinen' prout predict Johannes superius placit therein. tando allegavit & de hoc ponit se super pa triam & predict' Jacobus Grammer similiter Joeo preceptum est vic' quod venire faciat bie taken on the in craftino fance trinitatis duodecim, ec. per quos, ec. & qui ner, ec. ad recogn', ec. quia tam, ac. postea continuatur inde processus in ter partes predict de predicto placito per jur polit inde inter eas in respectum his usque ad hunc diem feilt' a die pasche in 15 dies anno regni didi Dom' Reg' fecundo nili julticiat ad affilas in com' pzed' capiend' affign' per formam Statuti, &c. die Meneris 19 die Par tii paor' paeterito apud Nottingham in com pred prius ben' & modo hic ad hunc diem ben' tam predict' Jacobus Grammer quam predict' Johannes Watson per attorn' suos predic & prefat justiciar' ad affisas cozam, ec. mis' bic re cozdum suum in hec verba.

The Poftea.

Postea die & loco infra content' cozam Job' Charleton mil' uno justiciar' Domini Regis de banco & Thoma Jenner mil' uno baron' scace carii dicti Domini Keg' justiciar' ejusdem Dom' Keg' ad assisas in com' Nottingham ca piend' affign' per formam fatuti, &c. venerunt tam infranominat' Jacobus Grammer quam in frascriptus Johannes Watson per attoan' suos in fracontent' & juratozes jurate unde infra fit men tio Cracti quidam eozum videlt' Tho' Overton (and eight more) venerunt & in juratam il lam jurati eriffunt & quia resto' juratozes ejuldem jurate non comperuerunt ideo alit de circumstantibus per vic' com' pred' ad hoc es lecti ad requisitionem predict' Jacobi Grammer ac per mandatum justiciar' pzed' de nobo aps ponuntur quozum nomina panello infrascript affilantur secundum formam statuti in hujus modi calu nuper edit' & provis, ani anidem juratozes sic de novo apposit' videlt' Will'us Gervas (and two more) exact similiter benerunt

The Jury.

The Tales.

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qui ad beritatem de infracontent' simul cum Common by aliis juratozibus predici' prius impanellatis & Copyhold-juratis dicend' electi triati & jurati dicunt super ers, & e facramentum fuum quod infrafcriptum baffum Cafe for diporat' Alamore jacet infra Forestam de Sherwood sturbing him in com' pred' quodque predict' meduagtum 30 therein. acre terre 10 acre patt & 30 acre passure Special Vercum pertin' in barra infraferipta predict' Jo- diet found. hannis Watson interius mentionat' ad que ipfe That Alaclamat cammuniam patture in predicto vafto more Wafte is bocat Alamore tanquam ad eadem spedan' & in the Foreit pertinen' funt infra Pouralem Anglice the Pur- of Sherwood, lieu dicta Foresta de Sherwood Et tidem jus and that the ratoz' ulterius super sacramentum fuum pred' faid Meffudicunt quod infrascript' Archiep' Eborum & om age, &c. is nes predecessores sui & omnes illi querum fa: within the tum idem Archiep' habnit in predicto manes Purlieu rio de Southwell cum pertin' pao leiplo & te: thereof. nentibus suis custumar' dictozum mestuagit 30 And they acrarum terre 10 acrarum pratt & 30 acrarum found the palture cum pertin' pred' Johannis Watson a Prescription toto tempoze cujus contrarii meniozia hominum for Common non existit habuerunt & habere consueverunt come fer forth by muniam patture in predicto basto vocat' Ala- the Defenmore p20 omnibus averiis fuis communicalibus dant, in the in & super tenementa illa cum pertin' Levan' Archbishop Cuban' quolibet anno omni tempoze anni for his Tetanquam ad eadem messuag' 30 acras terre 10 nants, &c. acras pati 30 acras pasture cum pertin' spec Wafte. tan's pertinen' modo & forma prout product' Johannes Watson per placitum suum rejungendo placitat' interius allegavit fed utrum bujusmedi prescriptio de communia pasture in Foresta has bend' & percipiend' tanquam specian' & pertin' ad ten'ta pred' jacen' a eriften' in Pourale Anglice the Purlieu dicta Foresta sit bona a valida in lege aliquibus tratutis vel statuto hujus regni Angliæ ac legibus & ordination' de fozesta non obstant' necne juratozes predict' penitus ignozant & inde petunt advisamentum e consideration' curie, ec. & si videbitur justis ciariis & curie Dom' Regis hic quod hujusmodi prescriptio de communia pasture in Foresta ha= bend' & percipiend' tanquam specian' & pertinen'

in Alamore

Copyholders, &c. Case for diflurbing him therein.

Common by an previda ten'ta jacen' & existen' in Pourale Angl' the Purlieu non est bona & baliba in lege tune iidem juratozes super sacramentum suum pzedick' dicunt quod pzed' Archiep' Eborum & omnes pzedeceslozes sui & omnes illi quozum statum idem Archiep' habuit in pred' manes rio de Southwell cum pertinen' pro seipso & tenentibus suis custumar' predict messuag' 30 acrarum terre 10 acrarum prati 30 acrarum pasture cum pertin' pred' Johannis Watson non habuerunt nec a tempore cujus contrarii memozia hominum non eristit habere consueves runt communiam paffure in predicto basto bos cat' Alamore pro omnibus averiis suis commus nicalibus in & super predict' melluac' 30 acras terre 10 acras pati 30 acras pasture cum pertin' predict' Johannis Levan' & Cuban' quolibet anno omni tempoze anni tanguam ad eas dem messuag' 30 acras terre 10 acras prati & 30 aeras pasture cum pertinentiis specian' & pertinen' prout predict Jacobus Grammer interius allegavit & assount damna ipsius Jacobi Grammer occasione infrascripta ultra mis & custagia per ipsum circa fedam fuam in hac parte appolit' ad fer denarios & pro mis' & cu-Magiis ad 43 s. & 4 d. & fi videbitur, ac.

(15.) Tonkyn

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### (15.) Tonkyn versus Crocker.

Cornub. fl. TAcobus Crocker gen' & Leonardus Court-Ba-Billing sum' fuerunt as respons ron, before bendum Will'o Tonkyn De placito quare cepes whom to be runt unum eramentum Anglice a Brass Pan held. ipfing Will'i & idem injufte detinuerunt contra Replevin. vad' & plegios, &c. Et unde idem Will'us per Philippum Hawkins attoan' fuum queritur quod See the Repredict Jacobus & Leonardus 4 die Novemb' port of this anno regni Domini nostri Will'i, &c. quinto Court-Baron. avud paroch' de Sancta Agnes in quodam loco (B) pl. 14. ibidem vocat le Kitchen ceverunt eramentum unum Anglice a Brass Pan ipuus Will'i & idem injuste decinuerunt contra bad plegios quous que, &c. unde dicit quod deteriozat' cft & dams num habet ad valenciam centum solidozum & inde producit sectam, &c. & pred' Jacobus & Leonardus per Johannem Foot attorn' suum ven' & besend' vim & injuriam quando, &c. Et ut Cognizance ballivi Will'i Mohun Ar' bene cogn' captionem as Bailiffs of pred' eramenti Anglice Brass Pan in predicto Wm. Mobun. loco in quo, ec. & juste, ec. Duia dicit quod ante predict tempus quo supponitur captionem eramenti pred' fieri quidam Hugo Tonkyn Ar' That Hugo fuit leifit' de quodam messuagio & 50 acris Tonkyn was terre vocat' Trewartha cum pertin' in parochia seised in Fee de Sancta Agnes predict' in com' pred' unde pres of a Messudid locus vocat' le Kitchen est & predicto tem: age, &c. poze quo, ec. fuit parcell' in dominico suo ut de feodo a tenementa predicta tenuit de presido Will'o Mohun ut de manerio suo de My-held of the thian cum pertin' in eodem com' per fidelita: Manor of tem & redditum quatuoz solidozum singulis an: Mythian. nis ad festum sancti Mich' Arch'i solvend' nets By Rent of non per servitium faciend' sectam ad curiam 4 s. yearly, manerii pred' bis per ann' at manerium illud and Suit of tenend' de quibus quidem servitiis pred' Will'us Court. Mohun fuit feisit' per manus pred' Hug' Ton-

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Court-Baron, before whom to be held.

The Rent being behind, and the Suit not done, &c.

Ad curiam dicti manerii.

the Taking, Erc.

Bar to the Cognisance.

kyn ut per manus beri tenentis sui vivelt' be fibelitate e fecta curie pred' ut de feodo & jure ac de reddit' pred' in dominico suo ut de feodo g quia quatuoz folio' pzo redditu pzedia' pzo uno anno finito ad festum fandi Mich' Arch'i anno regni bici Dom' Reg', ec. nunc quinto prefat Will'o Mohun predicto tempore quo, ec. aretro fuerunt & non folut' ac feda curie ad curiam pred' Will'i Mohun manerii sut predict' apud paroch' de fancta Agnes infra manerium pzed' 24 die Octob' anno regni Dom' Reg' nunc quinto supradido pro manerio pred' tent' fuit insera iidem Jacobus & Leonardus ut bal-They justify livi Will' Mohun bene cognoverunt captionem eramenti pred' in predicto loco in quo, ac. pro redditu predicto fic aretro eriffen' ac pro fecta curie fic infecta ut in parcell' ten'tozum pres Dict' cum pertin' de prefato Will'o Mohun in forma pred' tent' & juste, &c. ut infra feodum & dominicum fuum.

Ct pred' Will'us Tonkyn bicit quod predic' Jacobus & Leonardus ut ballivi previa Will'i Mohun captionem eramenti predic' Anglice Brafs Pan in predicto loco in quo, ec. justam cognoscere non debent quia protestando quod previct' Will' Mohun non fuit feisitus de fervitiis predict' prout superius supponitur idem Will' Tonkyn pao placito dicit quod paed' Hug' Tonkyn tenuit tenementa pzed de pzefat Will'o Mohun ut de manerio suo predicto de Mythian per reduitum 4 folidozum pro lingulis annis ad feltum fandi Mich' Arch't folvend' tantum absque hoe quod predia' Hugo Tonkyn tenuit tenementa predict' de prefat' Will'o Mohun ut de manerio suo de Mythian predicto cum pertin' per fidelitatem & redditum quatnoz solido: rum lingulis annis ad festum sand' Mich' Arch'i folvend' necnon predict fervitium facien' fectam ad Curiam manerii predicti bis per ann' apud manerium illud tenend' prout predict' Jacobus & Leonardus superius allegaberunt Et hoc paratus cit verificare unde er quo predict' Jacobus & Leonardus captionem eramenti Anglice Brafs Pan predict' in predicto loco in quo, ec. fupe: de

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superius cogn' idem Will'us Tonkyn petit ju: Court-Badicium & damna sua occasione caption' & in ron, before juste detentionis eramenti pzedia' sibi adjudi, whom to be cari. Ec.

Et predict' Jacobus & Leonardus ut prins di Replication cunt quod predid' Hugo tenuit ten'ta pred' de and Iffue taprefat Will'o Mohun ut de manerio suo prod' ken upon the cum pertin' per fidelitatem & reddifum quas Traverse. tuoz solidozum singulis annis ad festum sand Mich' Arch'i solvend' necmon per servitium fas ciend' fectam ad curiam manerii pred bis per ann' apud manerium illud tenend' pacut ipit tidem Jacobus & Leonardus superius placifando allegaver' & de hoc pon' se super patriam & predict' Will'us similiter Ideo precept' est vic' quod venire faciat hic a die sance Trin' in tres septimanas duodecim, &c. per quos, &c. & qui nec, &c. ad recogn', &c. quia tam, &c. ad quem diem jurat' inter partes predic' de presoido placito polit' fuit inter eas in respectu hic usque ad hunc diem scilt' a die sand' Mich' in tres feptimanas tunc poor' fequen' nifi jufticiar' Dom' Reg' ad affilas in com' predict' Nis prius. capiend' affign' per formam Statuti, &c. die Mercurii i Die Augusti pror' preterit' apud Lanceston in com' predict prius ven & modo hic ad hunc diem ven' tam predict' Will'us quam predict' Jacobus & Leonardus per attorn' fuos predict' & prefat' justiciar' ad affisas coba postea die & loco infracontent' cozam Jo- The Postea. hanne Powell mil' un' justiciar' Dom' Reg' De banco & Thoma Rokeby mil' al' justiciar' Dom' Keg' de banco justiciar' ipsius Dom' Keg' ad anssas in com' Cornub' capiend' aslign' per formam statuti ven infranominat Will'us Tonkyn per attozn' fuum infracontent' a infrascript' Jacobus Crocker gen'a Leonardus Billing licet solemniter exact non ven' sed des Inquestaken faltam fecerunt Ideo jur' unde infra lit mens by Default. tio capiatur versus eos per defalt' & jur' jurate illius erad' quidam illozum, biz. Ed'rus Vowell (and two more) benerunt & in jurat' E 3

Court-Baron, before whom to be held.

The Tales.

Special Verdict. That Wm. Mobun was Lord of the Manor of Mythian. That there was an ancient Court there held coram seneschallo manevii, &c. when the Cognizance ad curiam fo not the fame Court. That the Plaintiff Tonkyn and were Freeholders of the faid held of Wm.

illam jurati existent & quia resto' jur' ejuldem jurate non comparuerunt ideo alii de circumffantibus per vic' com' predict at hoc electi ad requisitionem predict Will'i Tonkyn ac per mandat' justiciar' predict' de novo apponuntur quoqum nomina panello infrascript athlantur secundum formam statuti in hujusmodi casu edit' & provis' Ac jur' sic de novo appositi vivelt' Godfrey White (and eight more) exacti limiliter venerunt qui ad veritatem ins frascript' simul cum aliis juratozibus pzedia' paius ad hoc impanellatis & juratis dicend' elect' triat' f jurat' dicunt super sacramentum fuum quod din ante infrascripfum tempus quo supponitur captionem infrascripti eramenti Anglice Brass Pan interius fieri manerium de Mythian in com' predict interius mentionatum fuit antiquum manerium de quo quidem mas nerio infranominat' Will' Mohun Ar' eft & in infrascripto tempoze captionis eramenti pres did fuit seilitus in dominico suo ut de feodo \* juratozes pzedia' ulterius dicunt super sacr'um fuum predid' quod infra manerium predid' a tempoze cujus contrarti memozia hominum non existit fuit antiqua curia ibidem tens ta corum seneschallo manerii predict' pro tem= poze existen bis per ann a habuit separales liberos tenentes Angl' Freehold Tenants & feparales secratores Anglice Suitors qui fecerunt was for Suit lectam ad curiam predict' ejusdem manerit quodque infranominat' Hugo Tonkyn Ar' & manerii, and omnes antecessores sui fuerunt liberi tenentes ejusdem manerit & tenuerunt melluagia & tes nementa in advocatione infrascripta interius mentionat' de predict' Will'o Mohun & prede-cessozibus suis Dom' ejustem manerii ut be his Ancestors manerio suo de Mythian predict cum pertin' in com' predict' per fivelitatem & redditum quatuor folidorum fingulis annis ad festum fand' Mich' Arch'i folbend' necnon per ferbi-Manor, and fium faciend' fedam ab curiam manerii pacs

Mohun as of his Manor of Mythian. By Suit of Court, &c.

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vid' bis per ann' apud manerium illud tes Court-Banend prout in advocatione infrascripta interius ron, before mentionatur & juratozes predia, alterius di mpom to pe cunt super facr'um fuum predia' quod infra held. manerium de Mythian predict' eft & per bis And that the ginti annos jam ult' elaplos fuit unicus los faid Tonkyn lummodo liber tenens Anglice Freehold Tenant was the only aut liber sectator Anglice Free Suitor vivelt' Free Suitor predict' Hug' Tonkyn fed infrascript' tempore of the faid quo, &c. necnon a tempoze cujus contrarium Manor. memogia hominum non eriftit fuerunt & mo. That, Time nentes & senatores Anglice customary and conthere had ventionary Tenants and Suitors einstein manerii ventionary Tenants and Suitors ejustem manerii Copyhold \* juratozes pzedia' fuper facr'um fuum ulte- Tenants. rius dicunt quod pao redditu & fervitio ares tro predia' Jacobus Crocker & Leonardus Billing ut ballivi predict Will' Mohun Ar' Dom' manerit de Mythian predict' infrascript' tem= poze quo, &c. ceperunt & Detinuerunt eramen: That the Detum Anglice a Brass Pan in narratione infras fendants script' interius mentionat' sed utrum super to seized the tam materiam predict' per juratores predict' in Brass Pan as forma predict' compert' Hug' Tonkyn tenuit tes Bailiffs of nementa in cognitione infrascripta interius Wm. Mobun, mentionat' de prefat' Will'o Mohun & de ma Lord of the mentionat' de prefat' Will'o Mohun & de ma Lord of the Manor of nerio suo predicto cum pertinen' per fidelita Mythian, for fein & redditum quatuog folidogum fingulis Rent, and annis ad festum sandi Mich' Arch't solvend Suit of Court nection per servitium faciend sedam ad cue in Arrear. riam manerii pzedid' bis per ann' apud manerium illud tenendam necne juratozes pres did penitus ignozant Et inde petunt advisamentum & confideration' justiciar', &c. cur' dicti Dom' Keg' nunc hic de banco & a super totam materiam predid' per juratores predid' in forma predict' compert' videbitur justiciar' curie Dom' Reg' nunc hic de banco quod predict' Hug' Tonkyn non tenuit ten'ta predicta de pres fato Will'o Mohun ut de manerio suo pres dicto cum pertin' per fidelitatem & redditum quatuoz folidozum fingulis annis ad festum fand' Mich' Arch'i folbend' necnon per ferbis

Court-Baron, before whom to be held. tium faciend' fedam ad curiam manerii pzedid' bis per ann' ad manerium illud tenend' tunc tidem juratozes dicunt fuper facramentum fuum predid' quod predid' Hug' Tonkyn non tenuit tenenienta predida cum pertin' de prefato Will'o Mohun ut de manerio suo predici cum pertin' per fidelitatem & redditum quas tuoz folidozum fingulis annis ad festum sandi Mich' Arch't folvend' necnon per ferbitium faciend' fectam ad curiam manerii bis per ann' apud manerium illud tenend' prout predict' Jacobus Crocker & Leonardus Billing interius placitando allegaverunt & tunc affount damna iplius Will' Tonkyn occasione infrascripta ul-tra mis' & custagia sua per ipsum circa sectam fuam in hac parte appolit' ad duos denarios & pro mis' & custagiis illis ad quadras ginta solidos sed si, ac.

(16.) Bation

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## (16.) Batson versus Potter.

the mentioner of mentalities and miles

Insula Elien' in Placita in curia de recordo Customs of com' Cantab. Placita in curia de recordo Customs of Manors fion' placitogum tent' apud Wesbech Die Martis pleaded. 22 die Septembris anno regni Domini noffri Will'i Tertii Dei Gratia Anglia, &c. Kegis fidei vefenfozis, ec. odavo fecundum 'cons' curie predict a tempore cujus contrarii memoria hominum non existit infra infulam pred ulitat' & approbat' coram Selathiell Lovell mil' capital' justiciar' dicti Domini Kegis ad plas cita infra infulam Elien' predict' tenend' af-

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> Ad hanc curiam ven' Robertus Batson jun' in propria persona sua & queritur versus Will' Potter nuper de Whitlesey infra insulam Elien' in com' predicto agricolam Johannem Beadles (and others) de placito quare ceperunt diversa bona & catalla ipsius Rod' Batson & ea injuste ven' plegios de prosequend' scilt Johannem Doe & Ric' Doe & ad istam eandem curiam petit process' ei inde fieri secundum consuetudinent curie predict Et et conceditur Et super hoc fecundum consuetudinem curie predid' precept' est Thomæ Edwards Ar' ballivo insule predicte & ministro curie predict' quod summoneat per bonos summonitozes Will' Potter Johan' Beadles (and others) quod fint in curia hic ad hozam undecimam ante meridiem ejusdem diei apnd Wesbech predict' hie infra enriam predict ad respondend prefat Rob'to Batson De placito predicto Cadem hora data est prefat' Rob'to Batson hic, ac. Et super hoc ad eandem hozam venit predicus Robert' Bat-fon & ponit loco suo Robert' Clerk attorn' fuum berfus prefat Will'um Potter Johan' Beadles.

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Customs of Manors pleaded.

Beadles, &c. De placito predicto ad quam quidem hozam benit tam predict' Will' Potter Johannes Beadles, ac. in propriis personis suis quam predia' Rob' Batson per attorn' suum predia' Et prefatus Tho' Edwards ballibus insule predig' a minister curie hic retorn' hic in curia quod ipse summonebat per bonos summonitozes pzed' Will' Potter Johan' Beadles, &c. ellend' hie in curia ad hogam predictam ad respondend' pres fat' Rob' Batson de placito predicto Et super hot predict' Will' Potter Johan' Beadles, &c. fenunt locis suis Mich' Beale attorn' suum bers sus prefat' Rob' Batson de placito predict' & superinde poliça ad istam candem curiam pre: vid' Robertus Batson queritur versus ipsum Will'um Potter Johannem Beadles, &c. nuper de Whitlesey Taylor, &c. De placito quare ceperunt averia bona & catalla iphus Rob' Watson & ea injuste detinuerunt contra bad' & plegios, &c. attorn' fuum predict' queritur quod predict' Will' Potter Johan' Beadles, Ac. 18 Die Julii anno regni Domini Will'i tertii nunc Regis Anglia, ac. odabo apud Whitlesey previd' in quodam loco bocat' le Bulls-grass hie infra jus his Cattle in risdictionem hujus curie ceperunt averia bo a Place cal- na & catalla ipsius Rob'ti Batson videlt' duas equas duo frena duo capiffra cannabaia Anglice Hempen Halters, ipsius Robiti & ca injuste detinuerunt contra bad' & plegios quousq; &c. unde dicit quod deteriozatus eft & damnum habet ad valentiam 20 l. & inde pasducit fectam, ac.

Replevin, Soc.

For taking led Bullsgrass.

The Avowry and Conufance.

Ct predict' Will'us Potter Johan' Beadles, Ac. per Michaelem Beale attoan' fuum predict ben' a defend' bim & injuriam fuas quando, ec. Et predict' Will'us in jure suo proprio bene advocat a predictus Johan Beadles ut Ballivus predict' Will'i bene cognobit captionem abes riozum bonozum & catallozum pzedidozum in predico loco in quo, ec. Et juffe, et. quia dicit quod predictus locus vocat le Bulls-grafs in quo supponitur captio aberiozum bonozum

e catallogum predictorum continebat in fe 4 Customs of acras pasture cum pertin' jacen' in quodam Manors communi campo bocat' Coatsfeild in East Rea pleaded. in parochia de Whitlesey infra insulam Elien' & That the infra jurisdictionem hujus curie de quo quidem Place called campo bocat' Coatsfeild pred' locus bocat' le Bulls-grass Bulls-grafs eft & predicto tempore quo, &c. necs contains 4 non a tempoze cujus contrarii memozia hos Acres of Paminum non exilit fuit parcell' Quodque pze, fure in dica pecia terre vocat' le Bulls-grass a tempoze Coatsfeild in cujus contrarii memozia hominum non eristit East Rea, &c. ula fuit & consuevit quolivet anno jacere in ses That Bullsparalitate Anglice several a sesto annunciationis grafs, Time out of Mind, beate Mariæ Virginis usque granum in paedido was Parcel campo carriat' fuit Quodque Philip' Waldgrave of Coatsfeild: Ar' eft & predicto tempore quo, ec. feilitus And ought fuit & adhuc feilitus exilit in dominico suo ut to lie in Sede feodo in maner' de Whitlesey sanctæ Mariæ veralty from Whitlesey fancti Andrew & De rectozia impzo: Lady-Day, priata De Whitlesey fanctæ Mariæ alias le Co- till the Corn quinary cum pertinen' Duodque pred' campus was carried bocat' le Coatsfeild unde pred' locus in quo, &c. out of Coatsut prefertur fuit parcell' elt & a predicto tem feild every pose captionis, et. necuon a toto tempose cue That Philip jus contrarii memozia hominum non eriffit Walgra :e fuit parcell' maneriozum pred' Duobque fuit was feifed in e a toto tempoze supradicto fuerunt in East Rea Fee of the pred diversa antiqua melluagia & terre cultus Manors of mar' parcell' maneriozum predictorum respective Whitlesey, concella & concellabilia per Dominum manes and of the riozum predict' pro tempore criften' ad volum: Refory imluntatem Dom' secund' consuetudinem manes propriate. riozum predictorum per copiam rotulorum cur' That Coatsmanerioz' illozum quodque funt & a toto tem feild, Time poze supradicio sucrunt in East Rea predict di out of Mind, versa antiqua messuagia e terre existen libera of the said Anglice Freehold que respective tenentur e a Manor. toto tempoze supravido tenebantur de manertis That there. predict in feodo simplici per separales redditus are several & servitia eozum maneriozum parcell Anodg; ancient Coinfra maneria predica habetur & a toto tem pyhold Mel-

fuages in

East Rea: And several Freehold Messuages and Lands held of the faid Manors in Fee, Time out of Mind, by several Rents and Ser-Vices, &c.

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Cuftoms of Manors pleaded.

ftom, that the major Part of the Freeholders and Copyholders at a Meeting used to grant the Grass, Oc. every Year to any Perion who would take it growing called Bullspras. To have the fame from Lady Day till the Corn was carried out of Coatsfeild. And that they have granted the fame accordingly.

poze cujus contrarii memozia hominum non existit talis habebatur consuetudo quod tant cultumar' limulcum predid' liberis tenentibus tenementozum illozum e majoz pars eozum pro tempore cujus contrarii memoria homi \*Special Cu-num non existit \* concesserunt & uit fuerunt t consueverunt ad conventus eozum tenentium cultumar' & liverozum super notitiam ante tune prointe dat' per armentarium Anglice the Pindar de East Rea pred' in communi trata de East Rea pred' concedere gramen crescen' super eandem peciam terre vocat le Bulls-grass in quelibet anno cuilibet persone ill' perquirere volenti poo tali denar' fumma quali per mas jozem partem predict tenentium ad talem conventum agreat' fuit habend' gramen predic tali perquisitozi inde a festo annunciation' beate Mariæ Virginis usque granum in eodem campo crescen' carriat' fuit Quodque pzedic' separal' on the Place liberi tenentes predidozum tenementozum pro tempore existentes de eorum separalibus liberis tenementis seilit' in dominico suo ut de feodo t omnes ill' quozum statum ipsi separaliter ha bent in eisdem a toto tempoze supradido e major pars corum fimul cum predict tenen tibus cultumar predictorum tenementorum cu flumar' concesserunt & ust sucrunt & consucs berunt ad conventus predict tenen' super no titiam ante tunc proinde dat' per armentarium Anglice the Pindar de East Rea pred' in communi trata de East Rea pred' concedere pred' gramen crescen' super eandem pectam terre vocat' le Bulls-grass in quolibet anno cuilibet persone ili perquirere volenti pro tali denas rioz' fumma qualis per majozem partem pzedictorum tenentium cultumar' & liberorum ad talem conventum agreat' fuit havend' gramen predia' pro tali perquilitore inde a prediad felto annunciat' beate Maria Virginis ufque gra-

The Rent to num in predicto campo cressen' carriat' fuit be employed Duodque denarii ut pacfertur agreat' folbend' to some pub- & solut pro gramine predicto a toto tempore lick Use of

the faid Tenants, as belonging to their Tenements.

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supradido erogat' & expend' erogari & expendi Customs of uft fuerunt & consueverunt pro publico usu pres Manors dia' tenentium custumar' & liberozum ad eos pleaded. rum libitum tanquam ad eozum separalia lisbera tenementa specian' & pertinen' Duodque And that omnes illi cui vel quibus gramen predict' ad they who tales conventus ut prefertur concess suisset a bought the tempoze cujus contrarium memozia hominum have, Time existit habuerunt gabili fuerunt & ust out of Mind, fuerunt & consueverunt habere & gaudere paes enjoyed the did' gramen per spatium predictum ad usum same during soum proprium Et predict Will Potter & Joh' the Time Beadles ulterius dicunt quod paed' tenentes 26 aforesaid. Die Martii anno odabo supradid' apud East Rea That Pubpred' ac infra jurisdictionem curie pred' secun- lick Notice dum consuetudinem pred' per Geor' Tassell ar- was given, mentarium Anglice the Pindar De East Rea pred' that the Teapud Eaft Rea pred' in communi frata de Eaft nants would Rea pred' dabant publicam notitiam qued cons meet on fuch bentus tenentium pred' haberetur fecund' con- a Day and suetudinem predict' in communi frata de East the Bullsdido ad concedend' gramen predid' crescen' sus And that per eandem peciam terre vocat' le Bulls-grass they did Duodque pred tenentes fecundum notitiam meet acpred postea a ante tempus quo supponitur cordingly. captio averiozum predict & bonozum & catallos rum predict' fferi feilt' predicto 27 Die Martin anno odavo supravido apud East Rea predid' in communi strata ibidem conveniebant & majoz pars eozundem tenentium ad tunc & ibidem proinde convent' concedebant predict gramen crescen' super predict' peciam terre predicto Will'o Potter habend gramen predict a festo annunc' beate Mariæ Virginis tune ult' pretes And the marito usque granum in ecdem campo carriarctur jor Part of them did sell pro feraginta & feptem folidis proinde felvend the faid Dictis tenentibus fuper Diem Dominicum por Grass to the post festum fandi Martini poor' fequen' ulum pred' Mirtute cujus concessionis idem Wm. Potter Will'us postea & ante granum in codem campo for 3 1 7 s.

Place to fell

ad Defendant

By Virtue whereof he entered to take the Grass, and took the Plaintiff's Cattle there Damage-fesant, &c.

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Cuftom of Manors pleaded

carriabatur feilt' 29 die Martii anno octavo fuvzadid' apud Eaft Rea predid' ac infra iu: risdictionem curie predicte in predictam peciam terre intrabit ad capiendum gramen in eadem crescen' ad usum suum proprium prout ei bene licuit Et quia eque predia' cum duobus fre nis pred' duobus capiffris predict super eis respective affiris pred' tempore quo, ec. fuerunt in predicta vecia terre herbam in eadem cres cen 'depascen' & damnum ibidem facien' predicus Will'us in jure suo proprio bene abbocat ac pred' Johan' Beadles ut ballious predic Will'i A per eius preceptum bene cognovit captionem aperiozum bonozum & catallozum pzedictozum in predicto loco in quo, ac. Et jufte, ac. dame num ibidem fic facien' Et hoc parat' funt verificare unde petunt judicium & retozn' ave: riozum bonozum & catallozum pzedia una cum daminis mis' a expentis fuis per ipfos circa fedam fuam in hac parte appolit' jurta formam Statuti fibi adindicari, Ac.

Bar to the Avowry and Conusance. Demurrer not appear ry to whom the Money was to be paid, nor in or Year, or every Year, of the Tenants used

Et predict' Rob' Batson dicit quod predict' Will Potter & Johan' Beadles ratione pacalles gat' captionem averiozum bonozum & catallo by protestando. rum paedia' in paedido loco in quo, ec. justam Cause of De- advocare seu cognoscere non Debent quia pao murrer, for testando quod adbocatio & cognitio pred' mas that it doth feriaque in eifdem content' modo & foama pae did' fact' & placitat' minus sufficien' in lege in the Avow- existunt ad manutenend' caption' averiozum bonozum & cataliozum pecdicozum in predico loco in quo, ec. fore justam hac de causa inter alia videlt' co quod non constat bel appawhat Month ret per advocation' & cognitionem ill' cui vel quibus benar' pro concessione graminis predicti folubil' aut folvend' consueverunt seu solubiles the Meeting fuere per suppositas consuetudines predictas nec allegatur bel apparet quando feilt' quo menfe five tempoze bel in quot annis bel annuatim vel septus aut rarius predict conventus tenen-Protestando to tium predict' habit' seu habend' fuit protestando the Truth of etiam non cognoscend' aliqua de concessone the Custom. graminis predict' prefat' Will'o Potter fore pera OUL

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Des placito tamen idem Rob'tus Batson dicit Custom of quod in East Rea pred' (eriften' Hamlet infra Manors Whitlesey predict') habetur & a tempore cujus pleaded. contrarit memozia hominum non eriftit habe: Bar by one batur consuetudo quod inhabitantes ejuspem other Cu-Hamletti quolibet anno die Dominico pregime ftom, for the post feaum fandt Martini Episcept in hieme Inhabitants ibidem eleger' & a toto tempoze supradicto to chuse two cligere consuever' duas idoneas personas de ins every Year habitantibus illis fore condos Anglice Storers at fuch a pro inhabitantibus de East Rea predict' pro quis Time to be buldam publicis negotiis inhabitantium illozum Storers to agend' faciend' & supervidend' qui quidem Con- Publick Budi Anglice Storers pao tempore existen' (inter fines, and alia hujulmodi negotia) providerunt & custodi to provide a verunt & toto tempoze supradicto providere & Common custodire consueverunt quendam communem Bull. taurum pro eisbem inhabitantibus ac ratione inde ac in a circa onera dicti officii fui fuftis stend' tidem Condi Anglice Storers p20 tems poze eriften' herbam in predicto loco in quo, ec. vocat' le Bulls-grass annuatim crescen' a For which festo annunciacion' beate Mariæ Virginis quo they were to usque blada in campo predicto crescen' messa & enjoy the abinde asportata fuer capere & recipere live Bulls-grafs, pro promptis denaris eis in manibus solut ame for vendere & disponere consueverunt optimo pretto their own quo potuerunt Ct idem Rob' Bation ulterius Ufe. dicit quod ipse ante predictum tempus captionis That the abertozum bonozum & catallozum pzedicozum Plaintiff face at codem tempoze captionis, &c. fuit unus Rob. Barfon de pred' duobus Condis Anglice Storers Debito was chosen modo ut prefertur ad inde prius apud East one of the Rea pred elect' quodque predict' Will'us Potter Storers. f Johan' Beadles de injuria sua propria diver-sa bona & catalla ipsius Robert Batson predict ceper' a injuste Detinuer' modo & fozma prout idem Rob' Bation superius verlus cos queri: Traverse of tur absque hoc quod infra maneria predicta the Custom habetur & a tempoze cujus contrarii memoria of felling hominum non eriffit habebatur talis confues the Bullsfundo de concedend' gramen predict' modo & forth in the forma superius in advocatione & cognitione Avowry. pied' specificat' qual' predict' Will' Potter & lohan

Custom of Manors pleaded.

Johan' Beadles superius allegaverunt & hoc par ratus eft berificare unde er quo pred' Will' Potter & Johan' Beadles captionem avertogum bonozum & catallozum predia in predia loco in que, ec. superius cogn' idem Robertus Batfon petit judicium & damna sua occasione cape tionis & injuste detentionis averiozum bonozum

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The Defendants maintain the Cuftom.

Tenders an Iffue.

Et pzedict' Will' Potter & Johan' Beadles ut prius dicunt quod infra maneria predict' has betur a a tempoze cuius contrarit memozia hominum non existit habebatur consuctudo talis de concedendo gramen predictum modo & for ma superius in advocat' & cognitione predid specificat' qual' ipse ibem Will' Potter & Johan' Beadles superius allegaverunt & de hoc ponunt se super vatriam & vzedicus Robent Batson similiter Ideo preceptum est per curiam hic fecundum consustudinem curie predici a tempoze cujus contrarii memozia hominum non eristit prefat' Thoma Edwards Ar' ballipo liber tatis infule predict a ministro curie predict quod benire faceret cozam capital' justiciar' ad placita infra infulam predictam tenend' affign' ad proximant curiam general' sessionis placitorum duodecim probos & legales homines de bisu de Whitlesey infra jur' curie predict' per quos rei veritas melius sciri poterit & qui nec pred' Robert' Batson nec pred' Will' Potter & Johan' Beadles aliqua affinitate attingunt ad recogn' super sacr'um suum utrum infra mas neria de Whitlesey Sancta Maria Whitlesey sandi Andreæ & redorie impropriat' de Whitlefey Sanctæ Mariæ alias le Coquinary habetur & a tempoze cujus contrarii memozia hominum non existit talis habebatur consuetudo de concedend gramen predict modo & forma predict superius in advocation' & cognitione predict's specificat' qualem predict's Will' Potter & Johan's Beadles allegaverunt necne quia tam predictus Robert' Batson quam Will' Potter & Johan' Beadles inter quos inde contentio est posuerunt se in jurata illa, &c. idem dies dat' eft partibus predict bis, ge. Ab quam quidem prop curiam general pa

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general' fessionis placitozum tent' apud Ely in Custom of po infula Elien' predict' Die Lunæ feilt' 4 Manors Die Octob' anno regni Domini Will'i tertii pleuded. nunc Regis Anglix, ec. nono cozam prefat' cas pital' jufficiar' Dom' Regis av placita infra infulam predict' tenend' benit tam predict' Robert' Bation quam predict' Will'us & Johan' Beadles per attorn' suos predict' & predict' Thom' Edwards ballibus insule predict ac minister curie pzedia' retozn' hic pzeceptum pzedia' in forma predicta fibi dired' in omnibus ferbit' e executum una cum panello de nominibus predict' & jurati inde sic impanellati er= acti feilt' Jacob' Avelin De Whitlesey gen' (and Verdich finds eleven more) ben' qui ad beritatem de premise the Custom fis predic' Dicend' electi triat' & jurati Dicunt fer forth in fuper fact'um fuum quod infra maneria pzes the Avowry. dida habetur & a tempoze cujus contrarii mes mozia hominum non eristit habebatur talis consuetudo de concedendo gramen pred, modo e forma superius in advocation's cognitione prebia' specificat' qual' ipli iidem Will' Potter & Johan' Beadles superius allegaverunt & affount Dampna ipsozum Will'i & Johan' Beadles occas lione predict' ultra mis' & cultagia fua per ip fos circa fectam fuam in hac parte appolit av unum folidum & p20 mis' & cultagus ill' ad quadzaginta folidos, ec. Ideo consideratum est per curiam hic quod pred' Rob' Batson & ples gii sui de prosequend pro falso clamore suo sint in misericordia, ec. quer nomina pleg', ec. e pred' Will' Potter & Johan' Beadles eant inde fine die, ec. e quod habeant retogn' aberiogung bonozum & catallozum preditt, &c. & qualiter, ec. confideratum eft etiam per iffam eandem curiam hic quod predict' Will'us Potter & fo-Beadles recuperent berfus pacfat' bertum Bation Damna fua predicta per jur predict in forma predicta allella ad quadraginta un' folidos necnon quindecim libras eif-Dem Will'o Potter & Johanni Beadles ad requis litionem fuam poo mis' & cultagiis predict per curiam hic de incremento adjudicat' que quis dem damna in toto se attingunts ad septems Deitm

Custom of Manors pleaded.

Error brought. beeim libzas & unum folibum & pred' Rob'

Batson in mia', &c.
Bostea scilt' vie curie pror' post Octob'
Sancti Hillarii extunc pror' sequen' coram vomino rege apud Westin' venit predict' Robert' Batson per Carolum Sanderson attorn' suum & bicit quod in recozdo & process' predia' ac etiam in redditione judicii predia' manifeste

eft erratum in hoc videlt' quod judicium presbia' in forma predia' reddit' redditum fuit General Er- p20 predit' Willo Potter & Johanne Beadles ror affigned. versus prefat' Robertum Bation ubi per legem terre hujus regni Angliæ judicium illud reddi debuisset pro predicto Roberto Batson versus infos Will'um Potter & Johannem Beadles Joeo in eo manifeste est erratum & petit quod paes dia' Rob' Batson ad omnia que ipse occasione judicit pred', ec. restituatur & quod predictus Will' Potter & Johan' Beadles ab errozes illos rejungant & petit similiter quod curia Domini Regis nunc hic procedat ad examination' tam record' & process' predict, draw wateriarum predict' superius per errores affign' super quo Non est erra- predict' Will'us Potter & Johan' Beadles gratis

tum pleaded. hic in curia per Ed' Southwell attorn' fuum Statim benerunt, ac.

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#### (17.) Atwood's Cafe.

Effex. fl. Dieceptum fuit vic' quod fi Lauren- False Judgtius W. in medicinis boctog fes ment. ciffet ipsum vic' securum de clamoze suo p20= fequend' tunc assumptis fecum quatuoz dife cretis & legalibus militibus in com' suo in propria persona sua accederet ad curiam mas nerti Domini Regis nunc de Havering at Bower The Recordae in plena curia illa recordari faceret loquelam ri facias loque fuit in eadem curia per Breve Dom' Reg' quelam. de Recto inter C. H. Ar' & Will' Atwood Ar' petentes & ipsum Laurentium tenentem de mas nerio de S. cum pertin' ac de tribus melluagus uno columbario quinque gardinis quins quagin' acris terre quinquag' acr' prati trefs cen' acris patture septuagin' acris bosci & communia pacture pro omnibus aberus cum pers tinen' in Horenchurch R. H. D. & C. unde idem Laurentius queritur übi factum fuille falfum judicium in eadem curia & recoedum ili has beret cozam justiciariis hic ad hunc diem scilt' a die sande trinitatis in quindecim dies sub figillo suo & per quatuoz legales homines ejus dem curie ex illis qui recordo illi interfuerint a quod fumm' per bonos fummonitozes pred' C. & Will'um quod tunc ellent audituri recoz= dum illud & quod idem vicecomes haberet hic fumm' nomina predictorum quatuor hominum t brebe illud Et modo ad hunc diem benit tam pred Laurentius per G. F. attorn fuum quam predict' C. & Will'us per R. R. attorn' fuos & \* vic' com' pred' videlt' H. S. At' modo \* The Re-retorn' breve predict in smnibus fervit' & eres turn of the cut' videlt' quod idem Laurentius invenit eidem Writ of Rebic' plegios de prosequend breve sum prepia cordari. pidelt' Johan' Doe & Ric'um Roe quodque ipse birtute bzevis pzed' fibi Directi affumptis fetum Johanne Doe & Ric'o Roe Johanne Denn

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False Judgment. tribus de com' pred' in propria persona accessit ad curiam manerii predict' & in plena curia illam recordari fecit loquelam unde in bredi predicto sit mentio & recordum illud coram justiciariis hic ad hunc diem habet bredi predicto sit mentio & recordum illud coram justiciariis hic ad hunc diem habet bredi pred consut' sub sigillo suo & sigillis R. L. E J. R. C. & J. B. quartuor legalium hominum essem curie er illis qui recordo illo intersuerunt & quod summ' pred' C. & Will'um per bonos summonitores videlt' per D. W. & W. C. quod tunc essent audituri recordum illud prout per brede illud sibi precept' suit cujus quidem recordi termor seguitur in hec verba.

The Record.

Havering at Bower fl. Curia Domini nottri Caroli secundi Dei gratia Anglia, ec. manerii sui de Havering at Bower predict tunc ibidem tent' 9 die Febr. anno, Ac. cozam ballivo diat Dom' Keg' manerit sui pzed' ac E. J. Ar' & R. C. gen' sedatozibus curie ejustem manerit fecund' cons' manerii illius a tempoze cujus contraria memozia hominum non ericit ulitat approbat' in eodem manerio, ec. Ad hanc curiam venerunt C. Ar' & Will' Atwood Ar' in propriis personis suis a protulerunt hic in curiam quoddam brebe didi Dom' Reg' de read clauso ballivis diai Dom' Reg' manes rii sui predict' direct' in forma juris secundum consuctudinem manerii pzed' erequend' cuius quidem beevis tenoz sequitur in hec verba \* Carolus fecundus Dei gratia, et. ballibis manerit nottri de Havering at Bower salut' Precis pintus vobis quod fine dilatione & fecund' consuctudinem manerii Havering at Bower plenum redum teneatis C. & Will' Atwood Ar' De manerio de D. cum pertinen' ac de tribus melfuagiis, ec. cum pertinentiis in Hornchurch R. H. D. & C. que Laurentius W. in medicinis doctoz eis defozc' ne amplius inde clamozem audiamus pro defedu redi Telle meiplo apud Westm' 12 die M. anno regni nostri Decimo Elliot Ct predin' C. & Will'us protestan' profes qui breve suum predict' in forma & natura brevis dici Dom' de ingressu super disseisinam in le post ad communem legem & invenerunt ples gios

\* The Writ of Right Close.

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gios de prosequend' breve sum pred' videlt' False Judg-J. H. & S. S. & petierunt processum inde eis fieri ment. secundum consustudinem manerii pred versus pred Laurentium W. retornabilem hie ad proris mant curiam pro manerio predict tenendam ad respondend predict C. & Will's in placito pres dicto Et eis conceditur per curiam, gr. sed pred' Laurentius prefens hie in curia in pros pria persona sua gratis hic in eadem curia comparuit absque aliquo processu versus cum dirigend' super quo pred' C. & Will'us pet' berfus Laurentium maneria de D. & C. cum pertin' ac tria meduagia, &c. cum pertin' in H. & B. H. D. & C. ut jus & hereditatem sua & in one idem Laurentius non habet ingrestum nift post disseilinam quam H. H. inde injuste & line judicio fecit prefat' C. & Will'o infra triginta annos jam ult' elaps' & unde dicunt quod ips limet fuerunt seiliti de maneriis & ten'tis predid cum pertinen in dominico suo ut de feodo a jure tempoze pacis tempoze Domini Regis nunc capiendo inde exples' ad valentiam, &c. & in que, &c. & inde produc' fedam, &c.

Et pred Laurentius defend jus suum quando, &c. & vocat inde ad Warr' T. P. Ar' & E. urorem ejus qui presentes hic in curia in propriis personis suis maneria & ten'ta predict cum pertin' gratis eis Warr' & super hoc idem C. & Will'us petunt versus predict T. & E. tenenstes per Warr' suum maneria & ten'ta pred cum pertin' in sorma pred gratis eis Warr' Et unde dicunt quod ipsimet suerunt seistide maneriis & ten'tis pred cum pertin' in Dominico suo ut de seodo & jure tempore paris tempore Domini Kegis nunc capiend in de erples ad balentiam, &c. & in que, &c. Et

inde paoduc' fedam, ec.

Et predic T. & E. tenen per Marr' suum desend jus suum quando, &c. Et ulterius voc' inde ad Marr' R. C. qui presens hic in curia in propria persona sua maneria & ten'ta pred' cum pertinen gratis eis Marr' & super hoc pred' C. & Will'us petunt versus predic R. tenentem per Marr' suam maneria & ten'ta predic in

F 3 form

False Judg- forma pred' & unde dicunt quod ipsimet fuerunt seisiti de maneriis & ten'tis pzedia' cum pertin' in Dominico fuo ut de feodo & jure tempoze pacis tempoze Domini Kegis nunc capiendo inde era ples ad valentiam, ec. & in que, ec. & inde pro-

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bucunt ledam, &c.

Et pzed' R. tenens per Warr' suum defend' jus suum quando, ec. & dicit qued predict H. non dissellivit prefatos C. & Will'um de manerits & ten'tis pred' cum pertin' prout tidem C. & Will'us per breve & narrationem suam pred' superius supponunt & de hoc pon' se super pas triam & pzedia' C. & Will'us petunt licentiam inde interloquendi & habent, ec. Et poltea iidem C. & Will'us reven' hic in eadem curia ifto eodem Die & predia' R. C. licet folemniter er ad' non revenit sed in contemptum curie res cessit & defaltam fecit Ideo \* cons' est per curiam hic quod predict' C. & Will'us recuperent feilinam fuam berfus pzefatum Laurentium De maneriis & ten'tis predid' cum pertin' & quod idem Laurentius habeat De terris pzedicoz' T. & E ad valenciam, &c. & quod iidem T. & E. habeant de terris predict R. ad valentiam & idem R. in misericozdia, ec. Et super hoc iidem C. & Will'us petunt preceptum a curia bic fescundum cons manerit predict emanan ballibo ejustem manerii & ministro curie hujus dirigend' de \* habere fac' eis plenariam feilinam de maneriis & ten'tis predict' cum pertinen' & eis conceditur retoznabile hic ad hozam quartam post meridiem hujus instantis diei cozam ballivis manerii pzed' & fedatozibus curie ejuldem manerii secundum cons' manerii illius Ad quam quidem hozam quartam cozam ballivis manerii pzed' & fectatozibus curie ejusbem manerit fecundum cons' manerit predict' benes tunt predict' C. & Will'us in propriis personis suis & S. G. suballibus manerii predict ac mis nister hujus curie modo hic in eadem curia mand' & teffatur quod ipfe \* Wirtute precepti predid' fibi dired' habere fecit prefatis C. &

Will'o plenariam feilinam de maneriis & ten'tis

predict cum pertin' prout per preceptum illud

\* Judgment

\* The Writ of Seifin awarded.

\* The Return of the Writ of Scifin.

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sibi preceptum fuit Et suver hoc predict C. & False Judg-Will'us petunt quod predictus Laurentius affig ment, net e beclaret bic in curia in quo bel quibus sibi fadum est falsum judicium in loquela pres vida si quid, ac. Et predict Laurentius dicit quod diversimodo factum est sibi falfum judis cium in loquela predicta \* videlt' in eo quod in \* Affignment recozdo predicto non habetur aliqua mentio nes of False que predict C. & Will'us in eodem recordo als Judgment. legaberunt in quo comitatu predictum manes rium de Havering at Bower existit nec quod mas neria e tenta predicta in predicto brevi de recto clauso specificata tenta fuerunt de dido Domis no Rege ut de predicto manerio suo de Havering at Bower predict ac etiam in hoc quod sus per predici breve de Recto clauso unde predics tum fallum judicium ut prefertur obtent' fuit super comparentia ipsius Laurentii gratis ad eandem curiam absque processu bel precepto berfus eum superinde sac' aut direct predict C. & Will's in & super placitum predictum vers fus eum in eadem curia narraberunt idema; Laurentius immediate vocat' inde ad Warr prefat' T. P. & E. urozem ejus qui similiter pres fent' venerunt & gratis maneria & ten'ta pred' eis warr's ulterius vocaverunt inde ad Wlarr' prefat' R. C. qui limiliter presens gratis eadem maneria & ten'ta eis warr' posteaque ad cans bem curiam befaltam fecit quodque superinde super ejus befaltam predict judicium in res cozdo pzedido superius recitatum redditum & recordatum fuit ac executio judicii illius super eundem diem in omnibus fuit servita & executa ubi per legem terre hujus regni magne Bzitannie hujulmodi judicium luper pzedidum brebe de recto clauso superius mentionatum profequi & obtinuisse debet ad separales curias infra manerium predid' fuper feparales dies ibidem tenend' a non ad unam eandemque cus riam super unum & eundem diem lie ut pres fertur in hujusmodi casu ibidem fuit tent & petit quod judicium predict' ob articulos & befalt illos ac ob alios defeaus in recozpzebid' eriften' repocetur & pzocestu adnub

#### Appendix of Pleadings

ment.

falfe Judg- abnulletur & quod ipfe ad polleffionem fuam pzebid' maneriogum & ten'togum pzebid' cum pertin' una cum exitibus & proficuls eorundem a tempoze judicii pred' reddit' perceptis ac ad omnia que iple occatione judicit illius amisit restituatur, &c. super quo vilis & per curiam hic diligenter examinatis & plenius intellectis tam previd' breb' de redo clauso & recordo & procedu predict superius inde habitis & factis & judicio super eisdem in forma predida reddit quam dida allegatione errozum predid' per predidum Laurentium affign' videtur justiciarits hic quod recordum illud in nullo eft bitiofum sea defectivum sed quod bonum & sufficien' in lege existit ac guod in recozdo illo in nullo eft erratum Ideo consideratum eft quod \* jus dicium pred' in omnibus aftermetur ac in om: ni suo roboze stet & effectu dica allegatione predicti Laurentii sive affignatione sua errozum pzedictozum in aliquo non obstante e pzed' C. # Will'us eant inde line die, #c.

\* Judgment affirmed.

> Et predict' C. & Will'us dicunt quod in reg cordo e processu predicis in nullo est erratum nec prefat' Lauren' in predicta curia manequela predicta & petunt quod justiciarii hic procedant ad examinationem recozdi predict' ac ad refozmationem & correctionem falli judicii (fi quod in eo factum inveniri probari live comperiri poterit) & quia justiciarii hic se advisare holunt be & fuper premiffs priufquam ulterins inde procedant dies datus est partibus predict hic usque in Octab' fancti Mich' de audiendo inde judicio suo eo quod iidem justiciarii hic inde nondum, ec. Ab quam biem bic ben' tam predic' Laurentius quam predict' C. & Will'us per attoan' fuos paedia' Et fuper hoc biffs & auditis & per justiciarios hic plenius intelledis tam predid' brevi de redo clauso quam pred' recordo & processu super eodem brevi ha-bit & factis ac judicio super eisdem reddito bibetur eisdem justiciariis bic quod in nullo prefat Laurentio falfum eft fadum judicium in eisdem & quod recozdum pzedia' bonum & lufficien'

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fufficien' in lege existit quodque in nullo est False Judginde erratum prout predict' C. & Will'us superment,
rius allegaverunt Ideo consideratum est quod
judicium predictum affirmetur in omnibus &
in suo robore stet & quod predict' C. & W.
eant inde sine die, &c.

# Upon a Recovery and Judgment affirmed.

(18.) Baffet verfus Harris.

Bucks ff. Dieceptum fuit bic' fi Hugo Harris Crowton fecissent se secur' ejus filia Johan' profequendo tunc assumptis secum quatuor dis cretis & legalibus militibus de comitatu suo in propria persona sua accederet ad curiam Johannis Baldwyn servientis ad legem manerit sui de Castle-fee in Ailesbury & in plena curia illa \* re: \* The Writ coadari faceret loquelam que fuit in eadem cue of Recordari ria per parbum bzebe iplius Domini Regis De facias loquerecto inter ipsos Hugonein & Margaretam tenen' lanf Johannem Baffet peten' De uno meduagio cum pertinen' in Ailesbury unde iidem Hugo & Margareta queruntur libi falsum fadum fuille jus dicium in eadem curia & recozdum illud habes ret hic ad hunc diem scilt'a die Sance Trinitatis in quindecim dies sub ligillo suo & ligillis quatuoz legalium hominum ejustem curic er illis qui recozdo illi interfuerunt & quod *fummoneat* per bonos summonitozes pzes Didum Johannem Baffet quod tunc effet hic auditur" recozd' illud Et modo ad hunc diem benerunt tam predict' Hugo & Margareta per Lauren

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Falle Judgment. \* The Return of the Writ.

Lauren' Preston attoan' suum quam paed' Johan' Baffet in propria persona sua Et vic' vivelt' Rob' Dormer Ar' modo \* mand' quod' pred' Hugo & Margareta inven' eidem vic' pleg' de pros' brebe fuum predict videlt Johan' Doe & Ric'um Roe Et quod ipse virtute bzevis pzedia' libi direa assumptis secundum Johanne Mitton Ric'o Heron Will'o Wyat & Laurentio Stone quatuoz dis cretis & legalibus militibus de comitatu suo in propria persona sua accessit ad curiam dicti Johan Baldwyn manerii fui de Castle-fee in Ailesbury predict' Et in plena illa curia recordari fecit loquelam que fuit in eadem curia per par bum breve bicti Domini Regis De Recto inter pzefatum Hugonem & Margaretam urozem ejus tenentes & predictum Johannem Basset petentem de uno melluagio cum pertinen' in A. unde idem Hugo & Margareta queruntur libi falsum fadum fuille judicium in eadem curia & record illud habet hic ad hunc diem sub sigillo suo t figillis N. H. T. M. R. S. & J. E. quatuoz legalium hominum ejusbem curie er illis qui res rozdo illi interfuerint & quod summon' pzedia' Johannem Baffet effendi ad hunc diem per I. M. & W. D. auditur' recozd' illud, &c. cujus qui dem recozdi tenoz sequitur in hec verba. Castle-see in Ailesbury st. Curta Johan' Bald-

The Record.

dictus Johan' Basset petit quod predicti Hugo & Margareta assignent & declarent curie hic in quo vel in quibus fibi falsum factum est judicium in loquela pred' si quod, &c. Et pred' Hugo & Magareta dicunt quod diversmodo eis factum eft falfum judicium in loquela predict videlt \* Affignment \* in hoc quod in recozdo pzed' non habetur of the False aliqua mentio in quo com' predidum manerium de Castle-see existit & petunt quod judicium pzedidum ob defedum illum & alios in recozda e processu predictis existentes revocetur e ad nulletur, ac. a quod ipsi ad possessionem sui melluagit pred' cum pertin' una cum exitibus e proficuis inde a tempore judicii predicti per ceptis & ad omnia que ipli occasione judicu illius amiserunt restituantur, ac. super quo ap

wyn (as in the Record or Plaint) super quo pres

Judgment.

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nitis & viligenter examinatis & intellectis tam False Judgvedict' beeb' de Recto Clauso quam predicto res ment. to200 & processu inde facis ac judicio super eis: dem reddito videtur justiciariis hic \* quod in \* The Judgnullo falfum est fadum judicium prefatis Hu- ment affirmgoni & Margaretz in eisdem & quod recozdum ed. vedia' bonum & sufficien' in lege existunt & auod in nullo inde eft erratum Ideo confide: ratum est quod judicium predict' in omnibus affirmetur ac in omni suo roboze stet & birs tute at quod predict' Johannes Baffet eat inde fine die, #c. \* Et super hoc vilis auditis & plene \* A Preceintellegis tam predicto brevi de falso judicio dent where quam recozdo & processu superinde factis & jus the Judgdicio superinde reddito videtur eisdem justiciar ment was hic quod divertimodo fallum factum est judicium reversed. persus prefat Hugonem & presertim in hoc pro eo quod post exitum predia inter partes predia' superius jurat' nulla comparentia seu des falta inter easdem partes recozdatur per quod jurata predict' capta & habita fuit absque alis qua comparentia partium predic Ac etiam in hoc quod nulla fit intratio veredicti ver ius rat' pzed' dati sed tantummodo cujusdam note seu memozandi pzo quo veredidum pzedia reddit' fuit Ac etiam in hoc quod in redditione ius dicii predicti nulla habetur mentio pro quo judis cium predidum redditum fuit nec berfus quem damna predicta per juratores predict' allella recuperari debent Ideo ob defeaus predictos ac alios in recozdo e processu prepia compertos consideratum est quod judicium pred' ut falfum a defeatibum revocetur a penitus pzo nullo has beatur & quod predicus Hugo ad omnia que ipse occasione falst judicii pzedidi amisit resti; \* The Money tuatur, ec. IDeo pzeceptum eft pzefat' Johan' recovered Baffet quot predictos \* 34 s. # 10 d. eibem Hu- upon the goni deliberet e restituat e si cosbem 34s e 10d. Judgment in eidem Hugoni non deliberaberit quod tunc fit the Manor hic in cr'o Sand' Trinitatis oftens quare non Court. faciat.

Super quo predicus Hugo presens hic in en Execution ria petit brebe Domini Regis vic' com' pred' awarded on pirigend' tam ad habere saciend' ei possessionem ance of the

termini Judgment.

False Judgment. termini sui pzed' adhuc ventur' in mestuagio pzed' cum pertin' quam ad capiend' pzefatum Johan' Basset si, &c. & eum salvo custodiend', &c. ad satisfaciend' pzefato Hugoni de damnis suis pzed' in sozma pzed' adjudicatis unde convidus est Et ei conceditur retoznabile hic a die Sande Trinitatis in tres septimanas, &c.

The Plaintiff declared in an Action of Debt, for a Bond forfeited by the Obligee, who had committed Felony.

(19.) Molineux versus Ingram.

Felons Goods forfeited. Wigorn' ff. A Ntonius Ingram nuper De, Ac. alias dictus, ec. summonitus fuit ad respondendum Tho' Molineux gen' de plac' quod reddat ei 20 l. quas ei debet & in: juste detinet, de. & unde idem Thomas per L. R. attoan' fuum dicit quod cum predictus Antopius 13 die Februarii anno regni Domini noftri, ec. 11 apud H. per quoddam feriptum fuum obligatozium concessit se teneri euivam R. F. in pzed' 201. folbend' eidem R. F. cum inde requist' fuillet quas quidem 201. pzedic' Antonius prefat' R. F. non solvit previctique 201, üt insolut' eriften' pred' R. F. 21 die M. anno, ec. 11 supradicto apud W, in com' Wigorn' pzed' felonice interfecit quendam W.W. potteaque per inquisitionem captam apud W. pzedia' 23 die M. anno II supzadiao cozam E. R. ad tunc uno cozonatozum dicti Domini Regis

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Regis in predict' com' Wigorn' super visum cor Felons pozis pred' W. W. ibidem jacen' moztui super Goods forterram super sacr'um proborum & legalium hor feited. minum ejustem com' presentat' fuit quod pred' The Obligee R. F. Deum pre oculis fuis non habens fed in found guilty fligatione diabolica seductus predicto 21 die M. of Murder anno, ec. 11 supradicto predict W. W. apud W. by the Coin vzedich' com' Wigorn' felonice interfecit & roner's Inimmediate post interfectionem illam le pro fes quest upon lonia predicta retrarit & effugit prout per eans View of the bem inquisitionem coram presat coronatore be Body, &c. recordo remanen plenius apparet cujus quidem felonie pretertu ac bigore inquisitionis predict fame.

coram presat coronatore in forma predict fame. predict' R. F. forisfecit dicto Domino Regi nunc predictum scriptum obligatorium ac 20 l. in eos dem scripto content' pzedicisque viginti libzis dido Domino Regi fit at prefertur forisfacis By Reafon idem Dominus Ker 21 die Febr' anno, &c. whereof he apud Westm' in com' Middlesex per literas suas forfeited the patentes quas idem Thomas sub magno figillo Bond, and suo Angliæ sigillat' hic in curia profert quarum the Money dat' est apud Westm' eisdem die & anno bedit due. talla debita e specialitates Anglice Specialties predic R. F. lic eidem Domino Regi forisfac Which were prout per eastern literas patentes plenius ape granted by paret per quod actio accrevit eidem Thoma, ec. the King to Et profert hie in curia scriptum predictum the Plaintiff. quod debitum predicum in forma predicta tes statur cujus dat' est predicto die M. Anno II supradicto, ec.

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#### (20.) Rex versus Sutton.

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Felo de se. See the Report of this Case, Tit. Felo de se. (A) pl. 8. Warr'st. M Emozandum quod Thomas Fanmini Regis in curia ipsius Regis cozam ipso
Rege qui pzo eodem Domino Rege in hat
parte sequicur in pzopzia persona sua venit hit
in curia diai Domini Regis cozam ipso rege
apud Westm' die veneris pzor' post crast' Sand'
Arinitatis ult' pzeterit' & pzo eodem Domini
Rege pzotulit hic in curia diai Domini Regis
cozam ipso rege tunc & ibidem quandam in
sozmationem versus Johannem Sutton nuper de
Playton in com' pzedia' Yeoman que quidem in
sozmatio sequitur in hec verba.

The Infor-

fl. Demozandum quod Thomas Fanshaw mil cozon' & attozn' Domini Regis in curia iplius Regis cozam iplo Rege qui pzo eodem Domino Rege in hac parte sequitur in propria persona sua venit his in curia dicti Domini Regis cozam iplo Rege anud Westm' die Meneris pzor' pot crastinum Sance Trinitatis ilto eodem termino a p20 eodem Domino Rege dat curie hic in telligi & infozmari quod Elizab' Lapworth nuper de Lowe in com' pred' vidua Deum pre ocu lis non habens sed instigatione diabolica mo ta & seducia 23 die Sept' anno regni Dom' no Ari Regis Caroli secundi, &c. decimo quinto apud Lowe pred' in com' predict in & super leipfam in pace Dei & bici Regis abtunc & ibidem felonice voluntarie & er malitia fua pze cogitata insultum fecit & quod predicta Elizabetha Lapworth cum quodam cultello valoris unius Denarit quod pzed' Elizab' Lapworth in manu fua dertra adfunc habuit & tenuit feipfam in & Super guttur ipfius Elizabethæ abtunc & ibidem felonice voluntarie e er malitia sua precogi tata percusit & pupugit dans fibi ipsi adtunc

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t ibidem cum cultello predicto in a super guttur Felo de fe. unam plagam moztalem latitudinis quatuoz unc' & profundit' unius pollicis & dimid' unius pollicis de qua quidem plaga moztali predicta Elizabetha Lapworth a predict' 23 die Septemb' anno 15 supradicto ufq; 26 biem Septemb' tunc pror' sequen' apud Lowe predict in com' pred' Languebat & languida virit que quidam Elizabetha Lapworth predict' 26 die Septemb' anno 15 supradido apud Lowe predid' in com' pred' de plaga moztali pzedida obiit & lic pzedida Elizabetha Lapworth apud Lowe predict in com' predia' felonice voluntarie e er malitia sua precogitata e ut Felo de se seipsam interfecit e murdzavit contra pacem dici Domini Res \* 'Tis not gis nunc cozonam & dignitatem fuas, &c. \* prout per quandam inquisitionem cozam Johan' Yardly averred that gen' un' cozon' Domini Regis com' pred su de se, but onper visum corporis pred Elizabetha Lapworth ly prout per nuper capt' & in curia Dom' Reg' cogam ips inquisitionem fo rege per manas proprias iplius coron' delis liquet, when berat' plenius liquet & apparet Et quod Johan' the Fact Sutton nuper de Pailton in com' Warr' yeoman ought to be indebitat' fuit predict' Elizabethæ Lapworth in fet forth in summa 80 1. dicto die obitus sui + prout patet the Informaper quoddam scriptum obligatozium figillo ip tion; and fius Johannis figillat' & hic in curia prolat' & then that an geren' dat' primo die Novemb' anno regni, &c. Inquisition 14 predictus famen Johannes Sutton dictam sum was taken mam octoginta librarum nec aliquam inde par corporis, and cellam prefat' Elizabethæ in bita fua non folbit fo fet forth net aliqualiter contentabit per quod actio acs the Subffance crevit eidem Domino Regi ad habend' & eris of it; and gendum de pzefat' Johan' Sutton Dictam sum: then to conmam 80 l. unde idem Johannes est eidem Dos clude prout mino Regi responsur' unde ibem cozonatoz & per inquisitioattozn' Domini Regis pzed' petit pzo eodem nem.

corporis, and

This is no direct Affirmation, that the Defendant was indebted, &c. it ought to be, that the Defendant became bound to her in a Bond, in the Sum of 80 1 for he cannot plead, that he was not indebted, medo & forma; he must plead non est fastum, if he deny the Debt; so he ought to be charged with the Bond as his own A&.

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Felo de fe.

Domino Rege per advisamentum curie bic in premistis debitum legis processum versus prefat' Johan' Sutton in hat parte fieri ad responvend' dicto Dom' Regi de & in premiss, &c. per quod preceptum fuit vic' com' pred' quod non omittat, ec. quin benire faceret eum ad respondendum, ac.

The Demurrer.

Et modo scilt' die Jovis paor' post Octab' Sancti Hillarii isto eodem termino cozam Do mino Rege apud Westin' benit pred' Johan' Sutton per Jacob' Hales attorn' suum & habito auditu informationis pred' dicit quod ipse non intendit quod didus Dominus Ker nunc iplum Johan' Sutton pro premists in informatione pzed' superius specificat' ulterius impetere scu occasionare belit aut debet quia protestando di cit quod informatio predicta ac materia in eas dem content' minus sufficien' in lege existant ad quas ipfe necesse non habet nec per legem terre tenetur respondere pao placito tamen di cit quod Carolus primus nuper Rex Anglia din ante exhibitionem informationis predict' feilt' 23 die Maii anno regni sui 14 per quandam indenturam suam fedam apud pallatium suum Westim' inter predict' nuper regem per nomen ercellentistimi principis didi Domini Caroli Dei Watia Anglia, &c. fidei defensozis, &c. er una parte & quendam Simonem Clarke bar' per no men Simonis Clarke baronetti er altera parte cujus unam partem figillo Ducat' Lancastriæ er mandato pzefati Domini Regis appolitam idem Johannes hie in curia profert cujus bat' iisoem \* This is ip, die & anno supradia' \* Testatum existit quod

And Plea.

existit.

fortheKing's idem nuper Rer po diberlis bonis caulis & Grant ought considerationibus in indentura predicta mento be plead- tionatis ipsum nuper Regem specialiter moed quod con- bentibus per advisamentum & consensum Canceffit, and not cellarit & concilit fut Ducat' Lancaster' conces by Teftatum fiffet tradiviffet & ad firmam dimiliffet ac per indenturam predict' pro le a heredibus a fuc cellozibus fuis concesst tradidit & ad firmam Dimilit paefat' Sim' Clarke bar' cur' let' ac bis fum franci plegit de Brinklo cum membais in com' Warr' tent' feu in posterum burante termino

mino inferius per indenturam predict' concess' Felo de se. tenend' avud Brinklo vzedid' ac etiam omnia a finaula perquitita & proficua cur' & let' pred' cum certitudine eogundem necnon bona & \* Ca- \* Thefe talla felonum & fugitivozum fines amerciamenta Words do relevia extrahuras & bona & catalla waivia, not compreta annuatim & de tempoze in tempus burans hend the te termino inferius per indenturam pred Goods of concessam ibidem acciden' provenien' five con- Felo de fe. tingen' que omnia & lingula premista per pars ticular' inde mentionat' foge parcell' polleilon' Ducat' Lancastriæ pzed' in pzed' com' Warr' (omnibus & lingulis wardis maritagiis finibus p20 Parcel of the homagio respectand' deodand' custumar' tenen, Durchy of tium pao ingreffu & Heriot' ibidem acciden' er: Lancaffer. cept' & prefat' Domino Regi nunc hered' successozib suis omnino reservatis) habeno tes nend' occupand' & exercend' pred' cur' let' bis' fran' pleg' ac perquilitiones & proficua eorundem ac cetera omnia & lingula pzemilia supes rius per indenturam predictam superius cons cels' aut mention' foze concels' & dimissa cum suis pertinentiis (except' præexcept') prefat' Si- Granted to moni Clarke bar' & atign' fuis a felto annung Sir Simon ciationis beate Mariæ Virginis tunc ult' pretes Clarke and rit' ante datum indenture pred' usque ad finem his Assigns termini & p20. termino 31 annoqum extunc for thirtypor' lequen' & plenar' complend' & finiend' one Years. reddendo inde extunc annuatim prefato Domino Regi nunc heredibus & successozibus suis viginti solidos legalis monete Angliæ ad festa fancti Mich' Arch't & annunciat' beate Mariæ Virginis per equas postiones annuatim folvend' Under the duran' termino predicto per indenturam pred' yearly Rent preconcels, bront ber iugentnram bregin, ble ot 50% nius apparet Mirtute cujus quidem indens By Virtue ture predict Simon Clarke fuit pollesconatus de whereof Sir predict' premiffes cum pertin' (except' præexcept') Sim. Clarke & sic inde possessionat' existen' idem Simon was posses-Clarke postea scilt' 21 die Januar' anno Dos sed. mini 1651 apud Pailton predict' in com' pred' condidit testamentum & ultimam voluntatem fuam in scriptis & per idem testamentum & ult voluntatem suam quandam Dorotheam Carke ur' fuam executricem teft'i fui predict

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Felo de fe.

And made Doro. Clarke his Executrix, and died; who proved his Will.

And demanded the Money of the Defendant Sutton. as the Goods of a Felon, Erc.

who paid it to her.

Demurrer.

constituit & ordinabit & postea scilt' 15 die lanuar' anno Dom' 1651 ibidem obiit de premiffs predict ut prefert possessionat post cujus quidem Simonis Clarke mortem predicta Dorothea onus execution' testamenti predicti super se suscepit e fuit de premissis pred' ratione executionis tes Stamenti predicti Simonis possessionata pro res liduo vzedici termini 31 annozum tunc ventur' Et idem Johannes ulterius dicit quod villa de Pailton in informatione predict' superius mentionat' est & predicto tempore quo supponitur predicta Elizabetha de plaga mortali obiille fuit membaum de Brinklo pred' & infra precina curie let' & visus franci plegit de Brinklo pred' Et idem Johannes ulterius dicit qued predicta Dorothea de premiff's pred' ut prefertur polsessonata existen' postea scilt' 29 die Septemb' anno 15 dicti Domini Regis apud Pailton vzed' post mogtem predicte Elizabethæ & ante erhibitionem informationis predict requilibit de eodem Johanne predict' 801. eidem Dorothea ut bona & catalla felon' acciden' infra manerium de Brinklo predict' post mortem predict' Elizabethæ ut prefertur forisfaa' super quo predia' lohannes Sutton adtunc & ibidem solvit eidem Doand Chattels rotheæ previt' 80 !. prout ei bene licuit que omnia & fingula idem Johannes Sutton paratus eft verificare prout curia, ac. unde petit jus dicium ac quod ipse quoad premissa ab hac curia dimittatur, &c.

Et Tho' Fanshaw mil' cozon' & attoan' Dom' Reg' cozam ipso Rege qui pro eodem Domino Rege in hac parte sequitur pro eodem Dos mino Rege dicit quod diaus Dominus Rer nune per aliqua per prefat' Johannem Sutton superius placitando allegat' ab informatione sua predicta versus ipsum Johannem Sutton habend' pzecludi non debet quia dicit quod placitum predictum prefati Johan Sutton in forma pres dida superius placitatum materiaque in eodem contenta minus sufficien' in lege exis Aunt ad ipsum Dominum Regem ab infoz matione sua habend' precludend' unde pro des fedu sufficientis respons' ipsius Johannis in hac parte petit judicium & quod ipse de premitis

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Et previdus Johannes Sutton per attorn' fuum Joinder in vzedici' (unde er quo idem cozon' & attozn' dicti Demurrer. Domini Regis pro eodem Domino Rege ad placitum illud non respond' nec illud aliquas liter dedicit sed verificationem ill'admittere omnino recusat qued quirem placitum materiams que in eodem content' idem Johannes Sutton paratus eft verificare) petit judicium & quod iple de premisis per curiam hic dimittatur, ÆC.

#### (21.) Tooms versus Hetherington.

Dminus Ker mandavit vic' London breve Scire faciasi foum clausum in her verba ff. Carolus fecundus Dei gratia, &c. fidei defensoz, &c. Aic' See the Re-London salutem Cum Will'us Tooms Ar' nu port of this per in curia nostra apud Westm' fine bzevi Case in Tic, nostro ac per judicium ejusdem curie recu- Felo de fe. peravit versus Robertum Etherington de Chel- (A) pl. 9. sey in com' predict gen' per nomen Roberti Hetherington de Chelsey predit' generosum alias dia' Robertum Hetherington de Chelsey predia' generosum duas mille libzas de debito necnon viginti & un' solid' pro damnis suis que sultimuit tam occasione detentionis debiti illius quam pro mis & cultagiis luis per iplum circa fedam fuam in hac parte appolit' unde convid' est sicut nobis constat de recozdo Pofea predictus Will'us obiit intestatus post cu- Wm. Tooms jus moztem administratio omnium & angulos the Plaintiff rum bonozum & catallogum jurium & creditos died interum que fuerunt predicti Will'i tempore moze fate. tis fue per Will'um providentia divina Cantuar' Archiep' totius Angliæ Paimat' & Detropositian' apud London vivelt' in parochia beate

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Felo de se. Administrato Richard Tooms.

Mar' de arcub' in Warda de Cheap 27 Die anno Domini 1660 cuidam Ric'o Tooms genes tion granted roso commilla fuit Jamque er parte predicti Ric'i in curia nostra cozam nobis accepimus and licet judicium inde redditum lit executio tamen de debito e damnis et adhuc restat fas ciend' in retardatione fidelis administrationis pred' unde nobis supplicabit idem Ric'us fibi de remedio congruo in hac parte provideri Et nos in hac parte fieri volen' quod est justum Mobis precipimus quod per probos & legales homines de balliva vestra scir' faciatis prefat's Robert' Etherington quod sit cozam nobis apud Westm' die Wercurit poor post quinden' pasch' ad oftendendum si quid pro se habeat vel dis cere sciat quare predict' Ric'us executionem suam versus cum de debito a damnis predia habere non debet jurta vim formam & effectum recupes rationis predict' fi fibi biderit expediri Et ulterius ad facur' & receptur' quod curia noftra cozam novis adtunc & ivident consideraverit in hac parte & habeatis ibi tunc nomina eozum per quos ei scir' feceritis & hoc bzebe Tefte Roberto Foster mil' apud Westm' duodecimo die Febr' anno regni nottri decimo tertio. Ad quem diem cozam Domino Rege apud

of the Scire facias, nulla bona, &c.

Returned nulla bona.

Westm' venit pred Ric'us Tooms in propria The Return persona sua Et vic' videlt' Will'us Peak & Will'us Boulton retorn' quod pred' Robertus Nichil has bet in balliva sua per quod ei scir' facere potuerunt nec eft invent' in eadent & ipfe non venit per quod sicut alias precept' est vic' quod per probos, ac. scir' fac' prefat' Rob'o Hether-Alias Sci. fa. ington quod fit cozam Domino Rege apud Westm' die Jovis pzor' post mensem pasche ad ostendens dum in forma predicta si, &c. Et ulterius, &c. idem dies dat' est prefat Ric'o Tooms ibidem Ad quem diem cozam Domino Rege apud Westm' ventt predictus Ric'us Tooms in propria persona fua a prefat' bic' ficut prius retorn' quod pred' Rob' Nichil habet in balliva sua per quod ei scir facere possunt Et predict' Robertus ad eundem viem solemniter exact per Georgium Hill attorn fuum similiter venit & super hot idem Ric'us Tooms

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Tooms profert hic in curia literas administra: Felo de se. tozias predicti Archiepiscopi que commissionem earundem literarum administrationis eidem Rico Tooms in forma predicta testantur & pes tit executionem versus prefat Robertum Hetherington de debito & damnis predia' virtute recuperationis predict fibi abjudicari, ec. Et predict' Rob'us petit diem ad predict' breve de scir' fac' interloquendi usque diem Meneris pzor' post crastin' Sance Trinitatis Et habet, &c. Defendant idem dies dat' est presat' Ric'o Tooms ibidem, imparles. ac. Ad quem diem cozant Domino Rege apud Westm' benit tam predict' Ric'us Tooms in propria persona sua quam predia' Robertus Hetherington per attorn' suum predict' Et idem Ro-bertus dicit quod predict' Ric'us Tooms execus Plea. tionem suam versus eum de debito a damnis pred' pretextu recuperation' predict' habere non bebet quia dicit quod post redditionem judicit pred' feilt quarto die Junii anno Domini 1665 apud London videlt' in paroch' fancti Botolphi London idem \* Will'us Tooms bi & armis felo: \* The Plainnice & voluntarie seipsum interfecit & murdza: tiff, who rebit contra pacem didi Domini Regis nunc covered the posteaque per quandam inquisitionem indenta: Judgment tam captam apud London vzedia' videlt' in vas against Herochia & Warda pzedia quarto die Junii anno therington, Domini 1665 cozam Ed' Morton' gen' adtunc cozonatoze dice civitatis London super visum felf. corporis predicti Will'i adfunc & ibidem jacen' moztut per fact'um Ric'i Carter (and twenty Coroner's more of the Inquest) bonozum & legalium homis Inquest num dide civitatis adfunc & ibidem super sas cramenta sua cozam cozonatoze pzedido exilten jurat' ad inquirend' quando ubi e quomodo pred' found him Will'us Tooms venit ad moztem suam presen: Felo de se, tatum fuit quod predict' Will' Tooms predict' 4 and the Fact. die Junii anno 1665 supradido existen' per se in cubiculo suo in domo Pauli Pindar gen' fituat' e existen' in dida parochia sandi Botolphi Bishopsgate in Warda predicta & Deum pre ocus lis suis non habens sed motus & sedudus per diabolicam instigationem adtunc & ibidem scilt predict 4 die Junii anno Domini 1665 supras

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Felo de se.

bido cepillet in manum fuam quandam peciam funis Anglice bocat a Bed-cord ad valenciam unius denarii ac adtunc & ibidem binrit Anglice did tie & affirit Anglice did fasten unum finem ejusdem pecie funts ad columnar Anglice a Pillar fenestre eiusdem cubiculi & alt finem ejusdem pecie funis circa collum iplius Will' Tooms adtunc & ividem stantis & existen' fuper abacum bocat' the Ledge ejustem fenes thre & quod iple pred Will' Tooms (posit' locat' & affirat' existen' un' fin' ejusdem pecie funis super columnam fenestre predict's alter' fin' ejusdem pecie funis predict' circa collum ejusdem Will'i Tooms predict' modo & for ma predia") felonice voluntarie & ut felo de se adtunc & ibidem delapsus fuit Anglice did ilide a dejecit corpus suum a predicto abaco fenes Are supradido & per talem vindionem locatios nem & affirationem ambozum finium pred pes cie funis ut prefertur & per talem dilapsionem & dejectionem corporis ejusdem Will'i Tooms a predicto abaco fenestre predicte inse predict Will'us Tooms adtunc & ividem cum pred per cia funis voluntarie & felon' & ut felo de se suspendit suffocavit Anglice did choak & seipsum Arangulabat de quibus suspensione suffocatione E trangulatione in modo e forma predict ipse idem Will'us Tooms adtunc & ibidem scilt predico 4 die Junii anno Domini 1665 supradico apud London predict in parochia & Warda pred instanter obit pront per eandem inquisitionem retoan' in curia Domini Regis paed cozam ip-to Rege nunc apud Westm' existen' & ibident de recozdo remanen plenius apparet cujus quis dem Feloniæ de se pretertu ac vigore predia inquilition' cozam predicto coronatore capte predidus Will'us Tooms fozisfecit pzedia' Domino Regi pred duas mille libras & viginti & un' folid' & hoc parat' eft berificare unde petit judicium ü predictus Ric'us executionem suam versus eum de debito e damnis pzedia habere Debeat, &c.

By the Return of the Coroner's Inquest, the Debt was vested in the King,

Replication, setting forth the general Pardon.

Et predictus Ric'us Tooms dicit quod ipse per aliqua per presatum Robertum superius placi-

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tando allegat' ab executione sua versus predict' Felo de se. Robertum Hetherington de debito & damnis pres diais habend' precludi non debet quia dicit quod post predict tempus predict felonie de se per predict Will'um Tooms in forma pred pers petrat' scilt' ad parliamentum inchoat' & tent' apud Westm' in com' Middlesex 25 die Aprilis anno reani dicti Domini Reais nunc 12 ver quendam adum parliamenti intitulat' Adus immunts & generalis gratie Anglice Pardon indempnitatis & oblivionis inter alia enacitat ero istit per Didum Dominum Regem cum advis samento & concensu Dominozum & Commus nium in eodem parliamento convent' quod omo nes & quilibet suboiti dicti Domini Regis regnozum suozum Angliæ & Hiberniæ & Dominio rum Walliæ insularum de Jersey & Guernsey & ville Berwici super Twedam & al' Dicti Domini Regis Dominiozum hered' & executozum & ado ministratoz' eozum & cujullibet eozum fozent & authozitate dicti parliamenti ellent acquietat condonat' relarat' indempnificat' & exonerat' versus pzefat' Dominum Regem heredes & suc> cellozes suos & eozum quemlibet de & ab omnibus proditionibus misprissonibus proditionum felonis offentis contempt' transgressionibus in trationibus injuriis deceptionibus malefactis Anglice Misdemeanors forisfacturis penalitatibus & denariozum summis & de omnibus penis mozs tis penis cozpozalibus & pecuniariis & genes raliter de ab omnibus alus rebus caulis cons tentionibus Anglice Quarrels sectis judicits & ers ecutionibus in predicto actu minime except' que per prefatum Dominum Regem aliqualiter seu modis quibuscunque condonari potuissent ante & ad 24 diem sunii anno Domino 1660 quibulto bet live aliquibus subditozum suozum pzed'Ac etiam prefat' Dominus Ker contentatus fuit quod authozitate parliamenti pzedici ulterius inactitat effet a authozitate ejusdem enactitat eristit quod pred'immunis sua gratia indemps nitas & oblivio fozent tam bona & effectualis in lege cuilibet subditozum suozum pzedia' in per e contra omnia que in adu predido non funt

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funt except' quam predicta gratia a indempnis tas & oblivio fozent ac fi omnia offens' contempt' fozisfacur' clause materie sede contentiones a judicia executiones penalitates e omnes alie res in adu predid' minime except particulariter lingulariter specialiter & plene no minat' repetit' & specificat' fuillent ac etiam condonat' per propria e expressa verba e nos mina in suis generibus naturis e qualitatibus per berba & terminos adinde requilitos foze inseri e exprimi in predido adu immunis gras tie indempnitatis & oblivionis Anodque pred' subditi sui nec aliqui eozum nec heredes er ecutozes vel administratozes alicujus eozum forent vel essent segat' Anglice sued verat' aut inquietat' per bel er parte dici Domini Reais nunc heredum bel successozum suozum in cozpozibus bonis catallis terris vel tenementis fuis p20 quacunque materia causa contempt malefactis Anglice Mildemeanors fozisfacturis transgressionibus offensis sive aliqua re premis lis fad' vel commis' ante predid' 24 diem Junii 1660 contra Dominum Carolum nuper Regem Angliæ bel pzefat' Dominum Regem nunc cozon' dignitatem pzerogativ' vel statuta sua sed tantummodo pzo talibus materiis caus lis & offenlis qual' per adum predict' funt ercept' er eodem (aliquibus statut' vel statutis les gibus consuetudinibus bel nubus Anglice Usages ante tunc habitis facis vel ulitatis in contrarium in aliquo non obstant') pecut per eundem adum inter alia plenius liquet Migoze cujus quidem adus parliamenti predid' due mille lis \* But not re- bee & biginti & un' folio \* eronerat' funt ab alis vested in the qua fozisfadura pzetertu criminis pzedid' felonie de se aut inquisitionis predicte versus pres didum Dominum Regem nunc hered' & fuce cessozes suos Et hoc idem Ric'us paratus est verificare unde petit judicium & executionem fuam berfus prefat' Robertum Hetherington De a Release of Debito & Damnis predict' jurta vim formam & effedum recuperationis pzed' fibi adjudicari, Ac. cum hoc quod idem Ric'us verificare bult quod pzed' Will' Tooms tempoze moztis sue fuit subditus

Administrator without a Writ of Restitution, for the Pardon is only the Debt.

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nitus dicti Dom' Reg' nunc regni sui Angliz idema; Felo de se. Ric'us Tooms medo est subditus didi Dom' Regis nunc regnt fut Angliæ quodque nec pred' Will'us Tooms net predict Ric'us Tooms sunt seu eorum alter est persona in adu predict' ercept' quodque predict crimen Feloniæ de se per predid Will'um Tooms perpetrat non est cris men in adu pzedia' ercept' & hoc parat' est verificare unde ut paius petit judicium & erecutionem suam de debito & damnis predict in forma pred' recuperat' fibi adjudicari, &c.

Et predict Rob' Hetherington dicit quod plas Demurrer. citum pred' per pred' Ric'um Tooms modo & forma predicta superius replicando placitat mas teriaque in eodem contenta minus sufficien in lege existant ad ipsum Ricum Tooms execus tionem suam de debito & damnis predic' pres tertu recuperationis pzed' versus eundem Rob' Hetherington habend' manutenend' Ad quod idem Rob' Hetherington necesse non habet nec per les gem terre tenetur aliquo-modo respondere & hoc paratus est verificare unde p20 defectu sufficien' replicationis in hac parte idem Robitus petit judicium & quod pred' Ric'us Tooms ab erecus tione sua de debito & damnis predict' vers fus ipsum Rob' Hetherington habend precludas tur, &c.

Et predia' Ric'us Tooms Dicit quod placitum Joinder in predict per ipsum Ricum Tooms modo & for Demurrer. ma superius replicando placitat' materiaque in eodem contenta bon' & sufficien' in lege exis funt ad ipsum Ric'um ad execution' suam pred' de debito & damnis pred' versus prefat' Robertum birtute recuperationis predict' habend' manutenend' quod quidem placitum materiams que in eodem content idem Ricus varatus est verificare e probare prout curia, ac. Et quia predictus Robertus ad placitum illud non res spondit nec illud hucusque aliqualiter dedicit idem Ricus Tooms petit judicium & executios nem suam versus pred' Robertum de debito & dampnis pred' virtute recuperation' pred' libi adjudicari Sed quia curia, Ec.

Afterwards

Felo de se.

Afterwards the King brought a Sci Fac against the said Robert Hetherington, and he pleaded the same Plea as he had done to the Administrator of William Tooms, who was the Felo de se; and, upon a Demurrer to this Plea, he had Judgment likewise against the King, as he had before against the Administrator of Tooms; for the King could not recover against him, because by the Pardon he had released the Debt. I Sand. 361.

#### (22.) Swan versus Morgan.

Fine by a Steward of a Leet for refusing to be sworn.

Replevin.

Kanc. st. CHristophorus Morgan summonitus
fuit ad respondendum Stephano
Swan de placito quare cepit averia ipsius Stephani & ea injuste detinet contra dad' & plegios, &c. & unde idem Stephanus per Nich'um
Buck attorn' suum queritur quod predictus Christophorus decimo nono die Febr' anno regni
Domini Kegis nunc undecimo apud W. in
quodam loco vocat' B. cepit averia ipsius Stephani videlt' duos pullos equinos ipsius Stephani de ea injuste detinet contra dad' & plegios quousque, &c. unde dicit quod deteriorat
est & dampnum habet ad valenciam decem librarum & inde producit sedam, &c.

Et pzedia' Christophorus Morgan per Johannem Franklyn attozn' suum venit & vesenvit vim injuriam quando, &c. & ut vallivus Roberti Byng Ar' vene cognovit captionem averiozum pzedia' in pzedia loco in quo, &c. & juste, &c. quia dicit quod pzediaus locus vocat' B. in quo, &c. est & pzediato tempoze quo captio pzediata sieri supponitur suit infra precincum Hundredi de W. in comitatu pzediato de quo qui dem Hundredo pzedia' Rod' Byng est & eodem

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tempoze quo captio pred' fieri supponitur & diu Fine by a antea fuit seisitus ut de feodo & jure Auodque Steward of idem Robertus & omnes possessores Domini hus a Leet for jus Hundredi apud villam de W. infra predia' refuling to Hundredum existen' cum pertin' po tempoze be iworn. eristen' a tempoze quo non ertat memozia huc= usque habuerunt & habere consueverunt apud villam de W. infra predictum Hundredum ex Prescription iften' quendam bisum franci plegit fibe Letam Leet within bis per annum videlt' semel infra mensem the Hun-pzor' post festum Sand' Michis Arch'i & ites dred, twice rum infra mensem poor' polt feltum Paschæ in a Year. tenend' una cum omnibus libertatibus frans And as bechestis & articulis ad visum franci plegii sive longing to Letam pred' de jure spectan' tanquam ad Hun- the said dredum predict' fpectan' quodque infra precinc Hundred. tum Hundredi & visum franci plegii pzed' eft That the quidam burgus five hamletus Anglice vocat' Hamlet of the Borough or Tithing of Itham & quod Decens Itham is narius & quatuoz homines ejusõem burgi p20 within the tempoze eriften' inter alios per ballivum five faid Hunprepolitum pred' Rob'ti & omnium pollellozum That the dominozum ejustem Hundredi pzo tempoze Tithingman eriften' rationabiliter be tempoze in tempus and 4 other premoniti per publicam proclamationem inde Men of the infra predicam villam de W. fiendam ad euns faid Hamlet. dem visum franci plegit comparendum per tos being warned tum tempus predict benerunt & comparuerunt by the Baiad quemlibet vilum fcan' pleg' ibidem tent' & lift of the duodecim benarios argenti pro communi fine Lord, always totius burgi illius ad manus ejusdem pzepoliti appeared at pro tempore existentis ibidem ad usum Domini the said Leet. ejusdem Hundredi pzo tempoze eristentis sole And paid berunt Et idem decennarius & quatuoz homines common fimul cum alits personis cozam seneschallo ejus Fine. dem visus franci plegii pro tempore existentis And the de & super articulis eundem visum franci ples Tithingman gii tangentibus per totum tempus predict ad and the said curiam visus franci plegii previcti jurari & four Persons onerari consueverunt & ust fuerunt & de oms together nibus & fingulis articulis in visu franci plegit ils with others,

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fworn of the Leet Jury by the Steward.

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Fine by a fuling to be fworn. And have usually prefented Common Nusances and other Offen-That the Bailiff of the Manor made Proclamation Lect, &c. would be aDay, at fuch a Place. Court-Leet cordingly before the Steward. more being and required by the Steward to the Jury, the Steward fet a Fine upon them,

lius inquirendis & presentandis inquilitionem Steward of a fecerunt & communia nocumenta & alias com-Leet for re- munes offensas contra pacem victi Domini Ke gis ibidem presentaberunt & presentare uli fue runt Et idem Christophorus Dicit quod pzedid' Rob' Byng infa mensem Sancti Mich is & ante pred' tempus quo, ec. scilt' duodecimo die Octobris anno regni Dom' Regis nunc undecimo per eundem Christophorum adtunc ballibum five prepositum fuum Hundredi predict' publice proclamari fecit infra predid' villam de W. infra Hundred' predict' quod curia visus franci ples git pred' apud W. predict' die Jovis bidelt' unthe Lord of decimo die ejusdem menlis Octobris teneretur & ulterius ibem Christophorus dicit quod pofea scilt' ad visum franci plegti Hundredi pzes Did' apud Wroteham predict' tent' eodem unde that a Court- cimo die Octobris anno undecimo supzadid' coram Johanne Skinner adtunc feneschallo ejus held on such Whitseild abtune becennarius pzedicti burgi & Johannes Goodwin & quatuoz alii homines ejus And that on rem burgi ibidem in plena curia illa compathe faid Day rentes & abtunc & ibidem requiliti per predict and Place, a feneschallum ad prestand facr'um suum ibidem ad inquirendum & presentandum de articulis was held ac- in eodem vilu franci plegii inquirendis & paes sentandis infra predict' burgum de J. illi sa cr'um aliquod ibidem presentandum ad inquirendum & presentandum de talibus articulis And that the tunc & ibidem penitus recusaberunt per quod Tithingman idem Johan' Skinner adtunc feneschallus ejus dem visus franci plegii adtunc & ibidem in cuthen prefent, ria illa imposuit super paedictos Johannem Whitfeild Stephanum Thomain & Johannem Goodwin fines infra specificatos pao contemptis e contumaciis fuis & fines illos fuper eozum quem be sworn of libet abtunc & ibidem in curia visus franci plegii illius tarabit ad viginti denarios Et ul whereupon tempus quo, ec. apud W. pzedic extrarit in rotulo Extrad' ejusbem bifus franci plegii fines pred's extrados illos apud W. predid' deliberabit eldem nem

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eidem Christoph' Morgan adtunc preposito live Fine by a Ballivo Hundredi & visus franci plegii pred Steward of a ad levand & colligend' fines illos cujus preter. Leet for retu idem Christophorus postea & ante predict fuling to be tu idem Christophorus pouea (t ante prediu fworn. tempus quo, ec. apud W. predia requisit pression. And appointbidum Steph' Swan ad solvend' eidem Christoed the Bailist
phoro pred' viginti denarios de prediad fine sus
to levy it. per ipsum ut prefertur impolitos quos quidem Whereupon biginti benarios predid' Stephanus eidem Chri- the Defenflophoro folvere adtunc & ibidem penitus res dant being culavit & quia predict' viginti Denarit eidem Bailiff, he Roberto predicto tempore quo, ec. aretro fue, required the runt & non soluti idem Christophorus ut ballis Plaintiff to bus pred' Rob' Byng bene cognobit captionem pay the Fine, avertozum predia' in prediad loco in quo, ec. which he reinfra precincum Hundredi & bisus franci ple, fused : And infra precingum Hundred & vilus traite pres fo the De-gii predict & juste, &c. pro eisdem viginti des fo the De-fendant justi-nariis eidem Roberto in forma pred' sic ares stissed the tro existen, ac.

Et predict' Steph'us dicit quod predict' Chri- within the stophorus ratione pzeallegata captionem averio: Hundred. rum predictorum in predicto loco in quo, ec. ut Ballivus predict' Rob' Byng justam cognos Plea in Bar. cere non debet quia protestando quod predictus Burgus five Hamlettus worat' the Borough or Ti- By Protestathing of Itham non est net pred' tempore quo, tion that the tc. fuit infra precindum vilus franci plegii de W. pzed' nec quod pzedicti quatuoz homines not within burgi illius folverunt vel folvere debuerunt alis the Precinct quem Finem prout in predicta cognitione supes of the Lect. rius allegat pro placifo dicit quod diu & ans And that the te predict tempus captionis averiorum pres Common didozum face ac eodem tempoze quo, Ac. qui: Fine ought dam Tho' Willoughby Armiger fuit seisitus de not to be manerio five burgo de Itham cum pertin' in paid. Itham pred' in Dominico suo ut de feodo quod, Then pleads que idem Thomas & omnes antecessozes sui & that Thomas, omnes illi quozum statum idem Thomas modo Willongbby habet & pred' tempore quo, &c. habuit in eodem was feifed of manerio a tempoze cujus contrarium memozia of Itham in hominum non erittit habuerunt & habere cons Fee. sueverunt infra manerium live burgum pzed' de And pre-

Taking,

scribes in him to have a Court-Leet there twice in every Year, as to his faid Manor belonging.

Itham

Itham quandam curiam bifus franci plegii fibe

Fine by a fworn.

upon Oath Offences, &c.

Traverse of the Leet at Wrotham.

Replication

Steward of a letam bis per ann', (viz.) semel infra mensem Leet for re- Sancti Mich' Arch't & semel infra mensem Pasfuling to be chæ tenendam una cum omnibus libertatibus franchesiis & articulis ad visum franci plegii five Letam de jure speciantibus tanquam ad manerium pzedia' spedan' in quo quidem bisq At which the live Leta tam tenentes quam residentes ejusdem Tenants and manerii live burgi a toto tempoze supravido Residents did ust fuerunt & consueverunt inquirere & per appear, and cozum fact'um presentare omnes & omnimodas presented all con franchismes & malesacta in eadem curia vis fus franci plegit inquirend & presentand in fra precindum manerii fibe burgi pred' per petrata feu commilia abique hoc quod predic decennarius & quatuoz alii homines pzed burgi de Itham cozam seneschallo curie visus franci plegii de W. pzed' pzo tempoze existen' de t super articulis ejusdem visum franci plegii tangentibus per totum temp' pzed' ad curiam visus franci plegii de Wrotham pzedict' jurari & onerari consueverunt & uli suerunt aut de omnibus & fingulis articulis in visu fran' pleg' illo inquirendis & presentandis inquisitionem fer cerint ad communia nocumenta & alias offen sas infra cundem burgum contra pacem dici Domini Kegis ibidem presentand presenta-berunt & presentare ust suerunt prout predic Christophorus superius allegavit & hoc paratus est verificare unde er quo predict' Christophorus captionem aberiozum pzedia, in pzediao loco in quo, ec. superius cogn' idem Steph'us petit judicium & damna sua eccasione captionis & injuste detentionis averiozum predia sibi adju-

Dicari, Ac. Et predict' Christophorus ut prius dicit quod to the Plea. Decennarius & quatuoz alii homines predic burgi de J. cozam seneschallo visus franci plegit de Wrotham pzed' pzo tempoze pzed' eris ten' de a super articulis eundem visum fran' pleg' tangentibus per totum tempus predid' ad curiam visus franci plegii de Wrotham pres did' jurari & onerari consueverunt de omnibus a fingulis articulis in visu franci plegii illo

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inquirendis & presentandis inquisitionem feces Fine by a runt & communia nocumenta & alias commu, Steward of a nes offensas infra eundem burgum contra pas Leet for recem dicti Domini Regis ibidem presentand fuling to be presentaberunt & presentare uft suerunt prout sworn. ipse superius allegabit & de hoc ponit se sus per patriam, &c.

## (23.) Lord Roberts's Cafe.

TOhannes Dominus Roberts queritur de C. P. Fine set by gen' in cultodia mar' maresc', ec. de plas a Steward on cito quod reddat ei decem solidos legalis mo, a Presentnete Angliæ quos ei debet & injuste detinet ment in a pro eo bidelt' quod cum idem Dominus Johan-Leet for a nes Roberts per diversos annos jam ultimos Poundelapsos suit & adhuc existit seisitus de & in Breach.
manerio de Tregena cum pertinen' in com' Lord Roberts
Cornub' pred' in dominico suo ut de seodo & seissed in Fee
idem Dom' Roberts & omnes illi quorum stato of the Maidem Dom' Roberts modo habet in mar nor of Tretum idem Dom' Roberts modo habet in mas nerio pzedido cum pertinen a tempoze cus gena. jus contrarii memozia hominum non existit habuerunt a habere consueverunt infra manes nerium pred' \* curiam visus franci plegit de \* Prescribed omnibus inhabitantibus & reliden' infra manes to have rium predict' bis in anno videlt' unam, &c. Court-Leet faliam ad, fc. cozam feneschallo curie manerii within the pred' infra manerium illud annuatim tenend' Manor. tomne quod ad visum franci plegii tanquam To be held ad manerium predict' cum pertinen' fpectan' & twice a Year pertinen' Et idem Dom' Roberts ulterius dicit before the quod ad curiam visus fran' pleg' ipsius Dom' Steward. Roberts tent' apud S. infra manerium pzed' luper decimum diem Decembr' anno Dom' 1679 cozam J. W. Armigero tunc seneschallo 2

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Fine fet by a Steward on a Prefentment in a Leet for a Pound-Breach.

\* The Defendant was presented for a Pound-Breach, and Taking and Driving a Mare which was an Efiray.

† And fined 10s. by the Steward.

suo curie manerii pred' existen' per sacramen tum (of the Jury) jurat' ad inquirendum & pate sentand' ea omnia que ad bisum franci plegii pertinent adtunc in eadem curia onerat & jurat presentatum fuit quod pred' C. P. infra visum fran' pleg' fregit communem parcum de S. in fra precindum manerii de Tregena & abinde ce pit & aspoztavit unam equam episten' extrahur' seillt infca precindum manerit & in pred par co de S. imparcat' ad usum pred' Johan' Dom' Roberts Dom' manerii pred' per quod predia J.W. adtunc + feneschallus ejusdem cur' finem decem solidozum super predict C. P. pro frac tione predicta adtunc in eadem curia imposuit eidem Domino Johan' Roberts adtunc & adhuc Domino manerii pzedici' folvend' per quod ac tio accrevit eidem Domino Johan' Roberts ad erigend' & habendum de pzefat' C. P. pzedia decem solidos Paed' tamen C. P. licet sepius requilit, ac. predictos decem solidos predicto Domino Roberts nondum solvit sed ill' hucusq; solvere omnino contradirit & adhuc contradicit ad damnum, &c.

Fine of 10 1. by a Steward, &c. on the Defendant, who was chosen Constable, and refused to take the Office. Debt for a

Court-Leet by Letters Patents.

## (24.) Doe versus Ball.

Mrolus Doe queritur de Henrico Ball in custodia mar' maresc' Dom' Reg' cozam iplo Rege existente de placito quod reddat ei decem libras legalis monete Angliz quas et debet a injuste definet pro eo videlt' quod rum Dominus Jacobus nuper Mer Anglia 13 die Julii anno regni sui Anglia, etc. 16 & Sco-\* Grant of a tiæ 51 \* per literas suas paten' magno ligillo Anglia figillatas gerentes batum apub Weftm' eisdem die & anno quas idem Car' Doe hic in curia

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curia viofert tam pro & in consideratione summe Fine of 10% viginti solidozum legalis monete Angl' ad recens set by a Stew. fum scaccarii sui apud Westm' ad usum suum ver ard on the Willielmum Clerke militem bene e fibeliter folut Defendant, unde idem nuper Ker fatebatur se plenarius esse who was satisfaciend' & persolut' eundemque W. Clerke stable, and heredes executores & administrator suos inde ac refused to quietat' e exonerat' elle in perpetuum per literas take on him fuas predictas quam pro divertis aliis cautis & the Office. considerationibus ipsum Regem ad inde specialis ter moven' & de gratia sua speciali ac certa scien= tia & mero motu fuis dedit & concessit pro heredis bus & pao fucceffozibus fuis paefat' W. Clerke heredibus a affignatis suis quod ipse predictus W. Clerke heredes & affignati sui de cetero in perpetuum habeant teneant a gaudeant a habere tenes re e gaudere valeant e possint infea manerium dominium villam & hamletam de Corney & Hitch- To hold the am in com Bucks at infra precind evennoem same within manerii dominii ville & hamlete & cozum cuinfii the Vills of bet in dico com' Bucks eriften fibe non eriften' Corney and curiam lete & visus franci plegit de omnibus te: Hitcham. nentibus relidentibus & inhabitantibus & aliis re= siden' & venien' infra manerium dominium villami a hamlet pred ac infra precindum eorundem manerii dominii ville & hamlete & eozunt cujus libet five eozum aliculus predia cur'let' five vis' fran' pleg' eisdem locis diebus & tempozibus quis bus pred' W. Clerke hered' & affignat' viverit feu biderint opoztun' convenien' & necessar' secundum legem & consuctudinem regni sui Anglia cozam To be held seneschallo ejustem W. Clerke heredum & affign' before the suozum pzo tempoze existen' seu cozam deputat' Steward or hujusmodi seneschalli pao tempoze existen' & to, his Deputy. tum e quodcunque ad cur' let' fibe vifus fran' pleg' pertinet seu quoque modo speciat aut perfis nere seu speciare debet quovismodo ac etiam oma ma & fingula amerciamenta fines fozisfacturas penas penalitates perquitit' profic' libertates pres heminen' privilegia jura jurisdictiones quecung' que ad didam curiam lete live visus franci plegii pertinen' specian' inciden' emergen' bet surgen' aut que ratione hujusmodi lete vel visus franct plegit ad ipfum Regem heredes aut successores

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ard on the Defendant. who was chosen Constable, and refused to take on him the Office.

Grant of Waifs and Estrays by rers Patent, with the Precinc of the Leet.

To the faid Wm. Clerke. Affigns.

Fine of 10 1. fues quoquo modo pertinere poterint aut debue ferby a Stew- erint ac ulterius er ulteriozi gratia sua speciali a er certa scientia a mero motu suis p20 consideratione vzedida detet concessit & confirmavit per literas patentes predict' pro se & hes redibus & successozibus suis prefato W. Clerke heredibus & assanatis auod ivse vzefatus W. Clerke & affignati fui haberent tenerent gauderent & habere tenere gaudere valeant & polfint infea limites & precind' cur' let' & visus fran' rleg' predict ac infra manerium five dominium villam hamletam & loca pzedict' & eozum quodlibet non existen' terr' dominicales sibe vastum alicujus manerii sive aliquozum manes riozum dicti nuper Regis heredum & successos rum fuozum omnia & fingula bona & catalla Waiviata acciden' contingen' emergen' infra lis mites curie lete live visus franci plegii pzedid cum omnibus juribus membris & pertinentiis the same Let- universis sive infra manerium dominium villam & hamletam & loca predicta feu eogum aliquod habend' tenend' & gaudend' pzedia' cur' let' & bis fum franci plegii & totum & quicquid quod ad curiam lete pertinet seu pertinere poterit & des bet & omnia & lingula predicta amerciamenta fines fozisfacturas penas & penalitates perquifition' proficua libertates preheminenc' privilegia jura jurisdictiones bona & catalla Waviata & ex trahuras ac cetera omnia e lingula premilla per literas patentes predictas preconcella cum eo rum juribus membris & pertinentiis universis prefat' W. Clerke heredibus & affignatis fuis ad folum & proprium opus & usus ipsius W. Clerke his Heirs and heredum & affignatozum fuozum in perpetuum Ac etiam idem nuper Ker voluit & per literas patentes predictas pro se a heredibus a succel sozibus suis concesset prefato Will'o Clerke he redibus a assignatis suis quod ipse prefat Will'us Clerke heredes et affignati fui de tems poze in tempus posent a valeant colligere les bare recuperare & habere omnia & lingula a merciamenta fines fozisfaduras penas penalitates perquilitiones proficua predia ad solum t proprium opus & ulum & commodum iplius Willi u:

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Will'i Clerke heredum & affign' suozum imper: Fine of 10 1. petuum abique aliquo computo prefat' nuper fer by a Stew-Regi aut successozibus suis proinde reddend' ard on the five fiend' prout per literas patentes (inter Defendant, alia) plenius liquet \* Mirtute quarum quidem who was literarum patentium pzetertu idem Willi'us chosen Con-Clerke fuit De curia leta & visu franci piegu Leer, and predict' per predicum J. nuper regem in for retufed to ma predicta concella feilit' ut de feodo & jure take on him predictoque Will'o Clerke de curta leta live the Office. vis franci plegii sie ut prefertur seisit' eriften' \* By Virtue ibem Will'us Clerke postea seilt' I die Maii whereof the anno Domini 1625 apud H. pred' in com' pred' whereof the obiit de tali statu suo sic inde seisit existen Clerke, was post cujus maztem pzedida curia leta sive vi feised of the sus franci plegit per didum nuper Regem Court-Leet Jacobum in forma predicta concessa descendebat in Fee: ruidam Henrico Clerke ar' filio & heredi pzedia' And died Will'i Clerke militis, ec. So fets forth several seised, so Descents to John Clerke ut de feodo & jure that the Codenique Johanne Clerke de eadem cur' let' Court-Leet five visu fran' pleg' in forma predicta feisit' descended to eristen' idem Johan' Clerke per quandam in Henry Clerke, dentur' suam factam apud H. in com' pzedia Gre. and so to 25 die Novembr' anno Dom' 1659 inter ip John Clerke, sum Johannem Clerke & quosbam Philadelphi- who by an am Onslow ur ejus & Ricum Onslow milit Indenture & Arthurum Onflow ar' er una parte & predict' enrolled in Carol' Doe ex altera parte & in curia Chan, Chancery, cellarie (eadem curia apud Westin' in com' and in Con-Middlesex tunc existen') debito modo secundum sideration of formam Catuti in hujusmodi casu inde edit' 6200 l. paid # provist irrotulat' & recordat' fuit cujus qui to him by dem indenture alteram partem figillo ipfius Charles Doe, Johan' Clerke figillat' idem Carolus Doe hit in bargained turia profert tuius dat' est eisdem die t anno and fold the idem Johannes Clerke pao 6200 l. legalis mo Leet to him nete Angliæ eidem Johan' Clerke per pred' Ca- the said Ch. rolum Doe adtunc & ibidem manubus solut Doe and his bedit solvit concessit barganizavit & venvivit Heirs. prefato Carolo Doe inter alia predictam Curiam Letam five vifum franci plegit per bice tum nuper Regem Jacobum in forma predicta concess' hend' tenend' & gaudend' eandem Cu-H 2 riam

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Henrico

By Virtue And at a Court held on fuch a Day and Place before his Steward.

dant Henry Inhabitant within the Precinct of the Leet; and a Person fit for the Office of Constable, and being present in Oath of a Constable, upon the him 10 %.

Fine of 10 l. riam Letam fibe visum franci plegii prefato set by a Stew- Carolo Doe heredibus & aff gn' suis imperpetuard, &c. um Mirtute cujus idem Carolus Doe seilitus fuit de & in predict Curia Letæ live vilu franci whereof he plegit per didum nuper Jacobum Kegem in was seised of forma predicta' concess' ut de feodo & jure the said Leet codemque Carolo Doe de cadem curia leta live visu franci plegii in forma pred' seisit' existen' postea scilt' 10 die Octob' anno Regni Domini Caroli secundi, ec. duodecimo ad cui riam lete sibe visus fran' pleg' ipsius Caroli Doe predict' apud H. infra manerium de H. predict' tent' per appunctationem predict' Caroli Doe cozam J. W. ar' abtunc feneschallo ipfius \*TheDefen- curie fue pacdid' \* Henricus Ball tunc & Diu antea inhabitans infra parochiam de H. pzed Ball beingan & infra predict' bifum franci plegit predict' & eriften' homo idoneus ad officium constabularii pro e infra parochiam de H. predict' erercere adtune prefens in eadem curia existens des bito modo clectus fuit foze constabular' de parochia de H. predict' pro' anno tune pror' fes quente & per paedidum feneschallum paedid curie in eadem adtunc officiend' ill' constabular' p20 & de parochía illa de H. p20 anno illo fuper le suscipiend' a ad facr'um fuum coapo-Court, was ral' p20 debita executione officii constabular' chosen Con-pro & de parochia existen' infra precindum vistable of the sus franci plegii pro predicto anno tune prop' Parish of H. sequen' prestand' requist' ill' prestare adtune for the Year & ibibem penitus recufabit & in contemptum ensuing; and curie adfunc & ibidem contemptuole recess t & required by officium illub constabularii p20 & de parochia the Steward illa de H. p20 anno illo super se suscipere scu in officio illo de constabulario deservire adtunc & ibidem in eadem curia penitus denegabit & which he re- recusavit ob quod predict J. W. adtunc senes fused. Where- challus ipsius Caroli curie sue predict finem 101. fuper eundem Henricum Ball p20 Steward fin'd contumacia sua predicta in eadem curia impoluit qui quident finis 10 l. predicto tempore That being a impositionis inde fuit rationabilis sinis pro reasonable contumacia predicta per quod actio accrebit eistem.

Fine. Carolo ad erigend & hend de presato to

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Henrico Ball predict 101. predictus tamen Hen- Fine of 101. ricus Ball licet fepius requisitus, ec. paedia' by a Stew-101. prefat' Carolo nondum folvit fed ill' ei ard, &c. on hucusque solvere omnino contradicit & adhuc the Desen-contradicit ad damnum ipsius Caroli 5 l. & in- was chosen de producit sedam, &c.

Conftable. andrefusedto take on him the Office.

## (25.) Bellot versus Cartwright.

Ceftr. fl. TOhannes Cartwright nuper De, tt. in Fine upon an com', et. summonitus fuit ad res Admittance spondend Tho' Bellot bar' de placito quod rede to a Copydat et decem libeas quas et debet & injuste hold, and an detinet & unde idem Thomas per W. R. attorn' Action of fuum Dicit qued cum idem Thomas 10 Die Debt for it. Octobris anne, &c. & din antea & continue po See the Restea extunc hucusque suisset & adhuc existit port of this Dominus Manerii de W. cum pertin' in comi Fines. (B) 2. tatu predicto unde unum meduagium centum The Plaintiff acre terre centum acre pasture cum pertin' in was Lord of W. funt & a tempoze cujus contrarium mes the Manor, moria hominum non existit fuerunt parcell ac &c. This is tenementa custumar' ejusdem manerii ac disa good Premilla ac vimischilia per copiam rotulozum cedent. The cur' manerii presisti cuicunque persone vel Declaration quibuscunque personis ea capere volenti vel was drawn volentivus in secono simplici vel aliter ad vo by Sir Edm. luntatem Domini secundum cons' manerii Sanders, af-predicti de quibus quidem custumar' ten'tis just of Eng-cum pertin' quidam T. F. suisset seisstus in land. dominico suo ut de feodo ad volentatem Domini secundum cons' manerii pzedidi & lic in-De feifitus eriften' ibem T. F. pzebid Die & anno apud W. pzedici fecundum cons' manerit predicti a toto tempore supravido ulitat' a ap-H 3

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to a Copy Action of Debt for it. \* T. F. the Copyholder furrendered into the Hands of 2 Copyholders, to the Use of the Defendant And afterwards at fuch a Court, &c. The Defendant admitted.

A Day and Place appointed to Plaintiff, Lord of the Manor.

Fine upon an probat' in codem \* sursum reddidit tenementa Admittance predicta cum pertin' in manus Domini manes rti pzedid' per manus quozundum W. S. & J. hold, and an E. Duczum cultumar' tenentium manerit pzes bidi ad usum predicti Johannis Cartwright hes redum & affign' suozum in perpetuum ad bos luntatem Domini secundum cons' manerii e postea scilt' ad curiam ipsius Thomæ Bellot out of Court, manerit fui pzedicti tent' apud manerium ill' 21 die Martii anno, &c. cozam A. B. adfunc feneschallo curie manerii pzedia' benit pzedia: us Johannes Cartwright in propria persona sua & adtunc & ibidem petiit tenementa cultumar predicta cum pertin' jurta furfum redditionem predictam cui quidem Johanni Cartwright pred' and his Heirs. Thomas Bellot aufunc Dominus manerii ejus dem per seneschallum suum predict concessifiet ten'ta predicta cum pertin' per copiam rotulo rum curie manerii predicti habend' prefat' Johanni Cartwright heredibus & affignatis fuis in perpetuum ad voluntatem Domini secundum cons' manerii pzedidi & super inde pzedidus The Steward seneschallus adtunc & ibidem in aperta curia set a Fine of allessit decem libeas per predictum Johannem 101. upon the Cartweight eidem Thomæ Bellot adtunc Domi Admittance. no manerii ut prefertur existenti pro fine & admissione sua ad tenementa custumar' pred cum pertin' folbend' & adtunc & ibidem in aperta curia predicta preceptum fuit prefato Johanni Cartwright per seneschallum predictum pay it to the quod idem Johannes Cartwright solveret prefato Thomæ Bellot predict 10 l. super vicesimum diem Aprilis tunc pror' sequen' apud domum mansionalem ipsius Thomæ Bellot infra mane rium predictum & idem Thomas in facto dicit Which Fine quod pred' Johannes Cartwright non folbit et of 101. was bem Thomæ Bellot predia' 101. super predia' not paid up- vicesimum diem Apr' sed inde befaltam fecit on that Day. Et idem Thomas ulterius dicit quod ipfe po-frea scilt' i die Maii anno suppadicto apud W. pzedid' requisivit pzedid' Johannem Cartwright ad folbend eidem Thoma Bellot predict 101. uc ut prefertur alless quas quidem 10 l. pred Johannes Cartwright eidem Thomæ Bellot ad tunc & ibidem non solvit sed ill' ei solvere Fineupon an adtunc & ibidem penisus recusavit per quod Admittance acio accrevit eidem Tho' Bellot ad erigend' & to a Copyhabend' de presat' Johanne Cartwright predict' hold, &c. 101. predictus tamen Johannes Cartwright licet Asterwards sepius requisitus predict' 101. eidem Thomæ it was deBellot nondum reddidit sed ill' ei hucusque red manded of dere contradicit, &c.

paid to the Plaintiff. But he refused to pay.

## (26.) Osborne versus Sture.

Trefpafs.

Devon. fl. P Dmundus Sture nuper de Egbo-Heriot-Serrough in com' predict' ar' attach' vice. fuit ad respond' Hugoni Osborne gen' de plas See the Recito quare vi & armis domum iplius Hugonis port of this apud parochiant de Newton Ferrers fregit & Cafe in Tit. quendam spadonem Anglice a Gelding iplius Heriot-Ser-Hugonis pretit 30 l. ibidem invent' cepit & vice. (B) pl. abdurit per quod idem Hugo spadonem pres Trespals, &c. didum totaliter perdidit & amilit & alia enoz= mia ei intulit ad grave damnum iplius Hugonis & contra pacem Domini Regis nunc, ec. Et unde idem Hugo per Henricum Legaflick attorn' suum queritur quod predia' Edmundus 19 vie Octob' anno regni Domini Regis, ec. 36 vi & armis, ec. domum ipfius Hugonis pocat' le Stable apud paroch' de Newton Ferrers pred' fregit & quendam spadonem Anglice a Gelding ipsius Hugonis pretti 30 l. ibidem invent' cepit & abdurit per quod idem Hugo spadonem predidum totaliter perdidit a amisit alia enozmia ei intulit, Ac. ad grave dams num, ec. & contra pacem, ec. unde dicit quod beteriozatus eft & bamnum habet ab balens ciam 40 l. & inde producit lectam, &c.

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Ot pred' Edmundus per Carolum Tayler at

Heriot-Service.

That Philip

Grandfather

of Edmund

Sture, the

Defendant,

Fee of the

Dennymore,

Sture the

toan' fuum ben' & defend' bim & injuriam Plea in Bar. quando, ec. & quoad benire bi & armis necs non totam transgreffion' predict in narratione predict' mentionat' preter caption' & abourio nem svadonis predia' dicit quod ipse in nullo est inde culpabilis & de hoc ponit se super patriam a predict Hugo similiter a quoad caps tionem & abouctionem superius fieri supposit idem Edmundus vicit quod predia' Hugo acti on' fuam predictam inde verfus eum habere non debet quia dicit quod din ante predict tempus quo supponitur transgretho predia' fieri quidam Philippus Sture armiger abus iplius Edmundi in vita sua seilitus fuit de & in quibusdam claus terre vocat Dennymore Stowley & le Well-Parks situat' in Corswill alias Corsfield intra Parochiam de Ugborough in was feised in com' Devon' predicto in dominico suo ut de feodo e sic inde seisit eristen postea e ante Closes called predictum tempus in quo, ec. scilt' 5 die Maii anno regni Domini Caroli, &c. 19 apud New-Stowley and ton Ferrers predict per quandam indenturam Well-Parks, inter ipfum Phillippum er una parte & which he de-quandam Dorotheam Edgcomb adtunc de Ugmised to Do- borough in com' predict' viduam er altera parrothy Edgcomb te fact' cujus alteram partem ligillo predict' for 99 Years. Dorotheæ figillat' ibem Edmundus hic in curia profert cujus dat' est eisdem die & anno di milit & concessit eadem clausa cum pertin' eidem Dorothex habend' & tenend' eadem clausa cum pertin' eidem Dorothez executos

ribus administratozibus & affinatis suis ab

coom 5 die Maii regni, ec. 29 supradicto pro

a durante termino 99 annozum extunc pzor

sequen' & plenarie complend' & finiend' si eas

reddend' & folbend' post obitum bel becessung

If fhe and Margery Upton thould to feu eozum alter tam din vivere contingeret long live, paying an Heriot after their Deccale, or 40 s.

earundum Dorothez & Margerix suum vel eorum optimum Animal Anglice best Beaft in nomine Herioti aut 40 s, in loco inde

Anglice

Ed dem Dorothea & quedam Margeria Upton nus per ur' cujusdam Johannis Upton gen' defund' De qu

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Anglice in Lieu thereof ad electionem predicti Heriot-Ser-Philippi berebum & anign' suozum ita tamen vice quod in vita previere Dorothez null' Heriot' fol, Proviso that veretur post moztem pzedia. Margeriz Arrtute no Heriot shall cujus dimissionis eadem Dorothea in clausa pzez be paid upon dida cum' pertin' intravit & fuit inde postessis Margery, lionat' reversione inde pzesat' Philippo & heredizing Dorothy. bus suis existen' Et predicta Dorothea sic inde possessionata eristen' ac pred' Philippus de res verlione tenementozum pzedia' cum' pertin' in Dominico suo ut de feod' seilit' existen' idem Philip' ante pred' tempus quo, ec. apud Newton Fer- The Lessor rers obiit de fali fatu suo inde feisitus post died. cujus quidem Philippi mortem reverlio tenes mentozum pred' cum pertinentiis descendebat The Premiscuidam Edinundi Sture ar' filio & heredi ejule ses descended dem Philippi paed'que Edmundo de reversione to Edmund predicta in Dominico suo ut de feodo seisit' his Son, who eriften' ante predict' tempus quo, ec. apud died feifed. Newton Ferrers predict' obiit be tali fatu suo inde feisit' post cujus quidem Edmundi moztem reverlio tenementozum pred' cum pertin' And the Predescendebat cuidam Philippo Sture fratri & hes misses deredi ejustem Edmundi pzed'que Philip' De res scended to versione predicta in Dominico suo ut de feodo his Brother feilit' eriften' ante predict' tempus quo, ac. Philip, who apud Newton Ferrers predict' obitt de tali fatu died feifed. suo inde seisit post cujus quidem Philippi mozz tem reverlio tenementozum pzedid' cum pers tin' descendebat predicto Edmundo modo des And the Refend' ut filio & heredi ejustem Philippi predics version detoque Edmundo defendente de reversione pred' scended to in Dominico suo ut de feodo seilit' existen' ac the Defenpredicta Dorothea de eisdem tenementis cum dant. pertin' in forma predicta virtute dimissionis predict' per predictum Philippum abum iplius Edmundi modo defend' possessionata existen' eas pem Dorothea postea & ante predict' tempus The said Dequo, &c. feilt' 10 Die Maii anno Reg' Domini, rothy married ec. 5 apud Newton Ferrers predict' cepit in birum Hugh O born predict' Hugonem Airtute cujus quidem dimile the now sionis iidem Hugo & Dorothea in jure ipsius Plaintiff. Dorothex pollectionat' fuerunt de predictis claus lis terre cum pertin' pro reliduo termini pres Did'

vice.

&c. alone.

died.

Death the Defendant feised the Gelding, which was ill, because afer the Death of Margery, the faid Edmund had no Re-

Replication.

Demurrer.

Heriot-Ser- Did' in eisdem clausis terre cum pertin' ad tunc bentur' & inerpirat' & fic inde possessio nat' eriften' eabem Dorothea poffea feilt' 10 Die Maii anno Regni, &c. 30 apud Newton Dorothy died. Ferrers predict obiit post cujus mortem pres bicus Hugo fuit solus possessionat de clauss After whose predictis cum pertin' pro & durante reliduo Death Hugh termini predicti adfunc bentur' & inexpirato & the Plaintiff fic inde possessionat' eriften' postea & ante was possessed, predict' tempus quo, &c. scilt' 20 die Martii anno Regni, ec. 36 apud Newton Ferrers paed Margery Upton eadem Margeria chitt fuper cujus quidem Margeriæ mogtem predia' Edmundus modo Defen bens ut filius & heres predia' Philippi Sture qui fuit frater & heres predict' Edmundi Sture auf fuit filius & heres predid' Philippi Sture at' Upon whose predict Edmundi modo Defendentis pottea scilf predicto tempore quo, ec. apud Newton Ferrers perdict' fpadonem predict' eriften' optimum Animal Anglice best Beast ejustem Hugonis tem pore mortis ejustem Margeriæ in nomine Herioti debiti super mogtem ejustem Margeria eidem Edmundo modo defend' cepit & abdurit pacut ei bene licuit Que quidem captio & ab-Durtio spadonis predict in forma predic's er causa predict est idem reliduum transcressionis predict' unde predict' Hugo superius se mode version in the queritur & hoc paratus est verificare unde per Premisses. tit judicium si predict Hugo actionem suam pred' inde versus eum habere bebeat, &c.

Ct predict' Hugo petit auditum indenture predict in placito predict Edmundi mentionat e et legitur in hec verba, This Indenture, &c. quibus leatis & auditis idem Hugo dicit quod placitum predict' Edmundi quoad captionem & abouctionem spadonis predict superius in bar ram placitat' materiaque in codem content' minus fufficien' in lege eriftunt ad ipfum Hugonem ab actione sua predicta inde bersus pres fat' Edmundum habend' precludend' quodque tpfe ad placitum illud modo & forma placitat necesse non habet nec per legem terre tenetur aliquo modo respondere & hoc paratus est beris ficare unde pro defedu fufficien' placiti iplius

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Edmundi in hac parte fact idem Hugo vetit Heriot-Serjudicium & damna fua occasion' tranfgr' pred' vice. fibi adjudicari, &c. & p20 caula mozationis in lege idem Hugo secundum formam statuti in hujulmodi calu editi & provis oftend curie hic quod non apparet per placitum predict' quoad caption' & abductionem spadonis predict' placi-tat' quod spado predict' capt' fuit super premilla predict' superius concella & quod placitum predict eft vitiofum & caret forma.

## (27.) Randall versus Whiston.

Warr. ff. CAmuel Whiston nuper De Henley in Leet. Arden in com' predicto Tailor ats Trespass of tachiatus fuit ad respondendum Will'o Randall Assault and de placito quare bi & armis in quandam Eli-Battery, and zabetham Tailor ferbien' iplius Will'i anut spoiling Henley in Arden previa' infultum fecit & ip Goods. sam verberavit vulneravit & maletracavit per quod idem Will'us fervitium fervientis sui pzedict' per magnum tempus amilit ac bona t catalla sua ad valenc' quinque libzarum ibis dem inventa secuit & spoliavit & alia enozi mia ei intulit ad grave damnum ipfius Will'i & contra pacem Domini Regis nunc, &c. Et unde ibem Will'us per Samuelem Rawlins ats toan' fuum queritur quod paedid' Samuel' Whiston 8 die Aprilis anno Regni Domini Regis nunc primo vi & armis videlt' baculis gladis Prescription t cultellis in ipfam Elizabetham apud Henley for a Leet in Arden predict' in com' predicto insultum and a Marfecit & ipfam verberavit bulneravit & male ket, and to tradabit per quod idem Will'us ferbitium fer cut Butter vientis sui previeti per magnum tempus bis exposed to delt' per spacium unius mentis extunc poor' Sale, wanting

lequentis Weight.

Appendix of Pleadings

Leet.

sequentis amilit ac bona & catella videlt' bis ginti libzatas Butyri ad valentiam, &c. iplius Will'i adfunc & ibidem nuper invent' fecuit & spoliavit & alia enozmia ei intulit ad grave Will'i & contra pacem, &c. damnum iplius unde dicit quod deteriozatus eft & damnum habet ad valenc' 40 l. & inde producit sectam, Ac.

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Et predictus Samuel per Ed' Wills attorn' fuum benit & befend' bim & injuriam quando, ec. & quoad benire bi & armis necnon totam transgressonem predicam preter sectionem & spoliationem cujusdam parcelli Butyri inferius specificat' dicit quod ipse in nullo est culpabis lis prout predict' Will'us superius berfus eum queritur & De boc ponit le fuper patriam & vedid Will'us similiter & quoad predid' fedionem & spoliation' Butyri predict idem Samuel vicit quod predid' Will us actionem fuam pred' inde versus eum habere non debet quia dicit quod ante tempus quo superius supponitur transgresso predict fiert necnon eodem tempos re quo, ec. quidam Andreas Archer ar' fuit & feised of the adhuc eristit seisitus de & in manerio de Hen-Manor, &. ley in Arden in com' Warr' pzedia' in Dominico suo ut de secdo quodque idem Andreas & omnes illi quozum fatum idem Andreas modo haveaCourt-habet & predicto tempore quo, &c. habuit in Leet within manerio predicto cum pertinen habuere & has bere consueverunt infra manerium illud tam bisum franci plegii omnium residentium & inhabitantium infra manerium illud bis per ans num scilt' semel infra mensem pasche & iterum And a Mar- infra menfem Sandi Mich'is quotannis tenend' quam un' mercat' pro venditione & emptione Butyri & aliozum bidualium infra manerium illud ad benditionem exposit' quolibet die lune felling Goods. tenend' una cum affila panis cervifie & Butyri in mercat. ill' ad venditionem exposit' & ident Anda Custom Samuel ulterius dicit quod infra manerium illud talis habetur necnon a tempoze in cuius contrarium memozia hominum non existit has bebatur cons' quod essent de tempoze in tems

And. Archer and preferibes to the Manor.

ket every Monday for buying and

within the Manor forto chuse Aletafters to weigh Butter, pus infra manerium illud quidam officiarii bis

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bocati Ale-tasters in visu fran' plegii pred' de Leet. tempoze in tempus constituend' & jurand' & quod tales efficiarii haberent seu aliquis eozum haberet potestatem & authozitatem per assam t ponderationem cum ponderibus eo propolito ibidem ver totum tempus suveadicum in hac parte custoditis & ulitatis allaiare & ponderare fotum Butyrum in mercat' predict' ad venditis onem in formis quarter' Anglice of Quarts & semiquarter' Anglice half Quarts exposit' ne emptozes talis Butyri ibidem defraudarentur Et quandocunque aliquod Butyrum in aliqua tali fozma in mercat' ill' ad venditionem erpolit' deficeret de debito pondere in ca parte ibidem ulitat' feilt' Butyrum in forma quarter' deficeret de pondere trium librarum & Butyrum in forma semiquarter' beficeret be pondere unius libze & dimid' unius libze jurta affifam e pondera ibidem per totum tempus supradictum in ea parte custodita e ulitata quod tunc & toties bene liceret officiariis pres dictis vocat' Ale-tasters vel eozum alicui pzo tempoze existen' hujusmodi Butyrum ididem secare ne aliquis emendo Butyrum illud in And to cut mercat' predict' descaudaretur Et predict' Sa- which wantmuel Whiston ulterius dicit quod ipse idem ed Weight. drex tent' apud Henley in Arden predia' infra mensem Sandi Mich'is scilt' 24 Die Octobris That the anno regni Domini Jacobi fecundi nuper Res Defendant gis Angliæ, etc. quarto cozam Will'o Parker was chosen gen' adtunc seneschallo pred' Andrew curie il Ale-tafter at lius debite constitutus & juratus fuit unus offis the Leet, ciar' bocat' Ale-tafters infra manerium predice &c. tum jurta consuetudinem pzedidam qui quis dem Sam' Whiston hujusmodi officiar' fuit & continuavit usque ad & post predictum tempus quo, ec. vivelt' apud Henley in Arden previct' Duodque ipfe idem Samuel pzedico tempoze quo, ec. scilt' die lune predicto 8 die Aprilis anno primo supradicto apud Henley in Arden pred' ut officiarius predict' vocat' Ale-talter als saiabit & ponderabit quandam parcell' Butyri paedid Will'i per paefatam Elizabetham in predia.

#### Appendix of Pleadings

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Plaintiff's Butter brought to Market, &c. And that wanted in cut it.

predict' mercat' ibidem ad venditionem in for And that he ma femiquarter' ibidem ulitat' erpolit' & quia weighed the eadem parcell' Butyri adfunc & ibidem Defecit de predicto pondere unius libre & dimid' unius livze jurta afflam & pondera ibidem per to tum tempus supradia' in ea parte custodit' a ulitat' idem Samuel ut officiarius predict' bo rat' Ale-tafter predict' tempore quo, etc. apud Weight; and Henley in Arden predict' parcell' pred' Butyri therefore he fecuit fecundum debitum officit fut predict' ne aliquis emendo Butyrum illud in mercat' ill' defraudaretur absque ulteriozi damno in vel erga Butyrum pzed' facto pzout ei bene licuit Due est eadem sectio & spoliatio Butyri pzed' unde predict' Will'us superius versus eum que ritur & hoc paratus est verificare unde petit judicium fi pred' Will'us actionem fuam pre dia' inde versus eum habere debeat. rer general.

# (28.) Hutchison versus Jackson.

Pleadings Repugnant. See the Report of this Case in Tit. Pleadings. (A) pl. 6.

Kent, ff. IN Trespass for taking his Cattle in Gla-

fonby, &c. The Defendants plead in Bar, Et per Jaco-bum Nicholson actoan' fuum ven' & Defend' vim & injuriam quando, &c. & quoad benire vi & armis necnon totam transgressionem predidant preter captionem aboutionem & fugationem averiozum pzedia iidem Antonius & Johannes dicunt quod ipli non funt inde culpabiles & de hoc ponunt se super patriam & predict' Robertus (the Plaintiff ) fimiliter & quoad captionem aboution' & fugation' averiozum predictorum idem Antonius dicit quod predictus Robertus actionem suam predictam inde bersus eum habere non bebet quia dicit quod din ante pzedidum for

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predictum tempus quo, ec. quidam Thomas Pleadings Comes Suffex' fuit seifit' De manerio de Gla- Repugnant. flonby cum pertin' in com' predict' unde tam quedam patture contigue adjacen' bocat' Foresholts, fc. quam unum messuagium & 40 acre cum tertin' in Glastonby predict' sunt & a prediao tempoze quo, ec. necnon a tempoze cujus contrarit memozia hominum non existit fues runt parcell' in Dominico suo ut de feodo quod quidem mecluagium & 40 acre terre sunt a tempoze supzavico fuerunt tenementa cue stumar' ejusdem manerit ac dimissa ac dimisfibilia per copiam rotulorum curiæ ejusdem manerii per Dominum manerii illius bel per seneschallum suum curie ejusdem manerii p20 tempoze existen' cuicunque persone sive quibus cunque personis ea capere volenti vel volens tibus in feodo simplici ad voluntatem Domini fecundum consuetudinem manerii & discendi- This is Rebilia & que discendere de antecessore ad hære- pugnant to dem ut de jure hereditario tenentium vocat dimissa & Tenant-Right predictoque Comite de manerio dimissibilia, predicto cum pertin' in forma predicta feilit oc. eristen' idem Comes postea & ante predict tempus quo, ec. Ad curtam irfius Comitis manerii fui pzedid' tent' apud manerium illud 16 die Octob' anno Domini 1678 per copis am rotulozum cur' manerii concesti pzefato Antonio tenementa cultumar' pzed' cum pers tin' hend' & tenend' ten'ta illa cum pertin' prefato Antonio & heredibus eius secundum consuctudinem eiusdem manerii Airtute cujus quidem concessionis idem Antonius in tenta predicta cultumar' cum pertin' intravit & fuit e adhuc eft inde feilit' in Dominico fuo ut de feodo ad boluntatem Domini fecundum consuetudinem manerii ejusdem & idem Antonius ulterius dicit quod infra manerium ill' talis habetur & a tempoze cujus contrarii memozia non eristit habebatur consuetudo hominum quod quilibet tenens custumar' pred' ten'tozum custumar' cum pertin' habuit & habere usus fuit & consuevit habere pzo se firmariis & tes nentibus suis eozundem tenementozum cus fumar'

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Pleadings

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flumar' cum pertin' communiam paffure in Repugnant. predictis pasturis vocat' Foresholts, etc. pu Here the Cu- tribus baccis bel una bacca & uno equo quo ftomis plead-libet anno omni tempoze anni tanquam at ed by Way of tenementa sua cultumaria predicta cum persusage which tin' pertinentem Et idem Antonius ulterius dicit quod averia pred' predicto tempore quo, ac. fuerunt in pasturis predictis herbant ibi Dem tunc crefcen' Depafcen' & Damnum ibi dem facien' per quod idem Antonius dicto tempoze quo, ac. aberia predida ertra paffur' vzedick' leniter fugavit & challavit que est idem resid' transgr' predicte unde pred' Robertus su perius fe modo queritur & hoc paratus eft be rificare unde petit judicium fi pzedia' Robertus actionem suum predictam inde versus eum

habere debeat, &c.

Demurrer.

Et predictus Robertus quoad predictum plas citum predicti Antonii quoad captionem ab duction' & fugation' aberiozum vzed' per eum fact' superius in barram placitat' dicit quod placitum illud ac materia in eodem content' minus sufficien' in lege existent ad ipsum Robertum ab actione sua predicta inde versus euns dem Antonium habend' pzecludend' Duodque ipse ad placitum illud modo a forma predia placitat necesse non habet nec per legem terre tenetur respondere & hoc paratus est veri ficare unde pao defedu fufficientis placiti paed' Antonii in hac parte idem Robertus secundum formam statuti in hujusmodi casu edit' a provis' offendit curie hic has causas sequen' vis Cause of De- belt' co quod placitum illud est repugnans & contrarium in se in hoc videlt' quod tenementa custumaria predicta in eodem placito specificas ta allegantur elle & a tempoze cujus contrarii memozia hominum non existit fuisse dimista & dimissibilia cuicunque persone sive quibuscuns que personis ea capere volenti vel volentibus ad voluntatem Domini secundum consuctudis nem manerii pzedici acetiam elle & a toto tempoze supzadido fuisse descendibilia e que descenderunt de antecessoze ad heredem ut de jure hereditario tenentium quod est apparen' contradictio

murrer.

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contradictio Et de eo quod per idem placifim Pleadings non apparet cozam quo seneschallo sibe quo Repugnant. judice pzed' curia pzed' Comitis ad quam fu Another perius fupponitur pred' concessionem diagrum Cause of De-tenementozum cultumar' prefato Antonio fieri murrer. tenebatur Ac de eo quod placitum illud non respondet ad narrationem pred' in hoc videlt' quod non oftensum est quo predictus Antonius aperia iplius Roberti pzed' abdurit & fugavit nechon de eo quod idem Antonius superius allegabit ill' ejus fugationem & chasiationem eozundum aperiozum foze idem reliduum frans gresson' pred' id est fractionem claus ipsius Roberti predict', ec.

Et predict' Antonius quoad captionem abs foinder in duction' & fugationem aberiogum predict' per Demurrer. eum superius fieri suppolit' er quo iple sufficientem materiam in lege in placito suo ad predict' Robertum ab actione sua predicta vers fus eum habend' precludend' superius allegabit quam iple paratus eft berificare quam quidem materiam pred' Robertus non bedicit nec ad cam aliqualiter respondet sed verificas tion' illam admittere omnino recusat ut vaius petit judicium & quod predict' Robertus ab actione sua predicta inde versus eundem Antonium hend' pzecludatur, &c.

(29.) Crowther

#### (29.) Crowther versus Oldfeild.

a Copyholder for hinto his Common, &c. ad voluntatem Domini left See the Report of this Case in Tit. Pleadings. (A) 4, 5. \* Here ad voluntatem Domini was omited.

Pleadings by Ebor. fl. C Amuel Oldfeild nuper De North Wroine In com' predia' yeoman attach' fuit ad respondendum Josepho Crowther de placito dering him transgr' super casum, ec. Et unde idem Jose-from a Way phus per Johannem Empson attoan suum que ritur quare cum pred' Josephus I die Maii anno regni Domini Regis nunc 9 & Diu antea & continue poltea huculque feilitus fuillet adhuc feilitus existit de & in uno messuagio & Decem acris terre cum pertinen' in North Wroine in com' pred' parcell' manerii de Wake-field in eodem com' ac tent' per copiant rotulozum curie manerii illius ut tenens cultus marius eozundem in feodo simplici secundum consuctudinem eiusdem manerii \* cumque etis am idem Josephus habeat & havere debeat ipses que & omnes tenentes cultumar' dicozum tes nementozum suozum cum pertin' per consues tudinem infra manerium pred' a tempore cue jus contrarit memozia hominum non eristit ulitat' & approbat' habuerunt & habere confue, berunt communiam pasture in quodam loco pafture bel moze bocat' Warmlees parcell' etis am ejusdem manerii & continen' 40 acras in North Wroine pzed' pzo omnibus aperiis suis communicalibus super tenementa custumaria sua pzed' Levan' & Cuban' quolibet anno omni tempoze anni ad libitum funm tanquam ad eas dem tenementa cum pertin' specian' & pertinen' Pozed' tamen Samuel premifforum non ignarus sed machinans & intendens ipsum Josephum minus rite pregravare ac de communia pasture sue pred' sie ut prefertur habendum ils licite injuriose & minus juste impedire ac de proficuo suo inde magnopere deprivare I die Octobris anno regni victi Domini Regis nunc 9 magnam partem didi loci pasture sive moze bocat' Warmlees bibelt' duas acras terre inde apud

apud North Wroine pred' muris sepibus & fen: Pleadingsby suris inclusit & ill' sic inclusas din videlt' ex: a Copyholdtunc hucusque tenuit & cultodivit per quod er for hinidem Josephus communiam suam pasture pred dering him ibidem pro aberiis suis pred in a super tene, from his Way menta custumaria pred cum pertin Levan to his Com-Cuban' in tam amplo & beneficiali modo prout the Words all ipse preantea habuit & habere usus fuit & con- voluntatem suevit ac de jure habere debuit & debet per Domini were totum tempus illud habere feu recipere non left out. potuit nec adhuc potest ad dampnum ipsius Josephi Viginti libzarum & inde producit sec=

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22 10 D tam, &c. Et predictus Samuel per Willielmum Rawfon attorn' fuum ven' & defend' vim & injuriam quando, ec. & Dicit quod ipfe in nullo eft culpabilis de premiss superius bersus eum impolitis prout pred' Josephus superius versus eum queritur & De hoc ponit le super patris am & pred' Josephus similiter Ideo precept' est vic' quod venire faciat hic in Octob' pur' beate Mariæ Virginis duodecim, &c. per quos, &c. & qui nec, &c. ad recogn', &c. quia tam, &c.

## (30.) Dominus Rex versus Dickenson.

CArolus secundus Dei gratia Anglia, et. Presentment Rer fidei Defenso2, et. Mic' com' Eborum at a Leet for necnon seneschallo curie nottre bocat' le Turne enclosing and lib'tat' Honor' de Pontefract infra West Riding encroaching. com' predict' falutem Wolentes certis de caulis certiozari omnia & fingula presentamenta de Certiorari. quibuscunque transgr' nocumentis & incroachias ment' unde Ric'us Thompson Georgius Dicken- See the Refon Antonius Wright & al' cozam te presen port of this tati sunt ut dicitur cozam nobis & non alibi Leet. (D) pl. terminari tibi mandamus sicut pluries tibi manbas

Presentment mandavimus quod omnia e singula presenta-at a Leet for menta pred' cum omnibus ea tangen' quibusinclosing and cunque nominibus itbem Richardus Georgius encroaching. Antonius & omnes alii in eisdem presentamentis nominentur seu nuncupentur in eisdem rozam nobis sub sigillo tuo aut unius bestrum in cro' Sana Trinitatis ubicunque tunc fueris mus in Anglia mittas una cum hoc brevi ut ulterius inde fieri faciamus quod de jure & fecundum legem & confuetudinem regni noffri Angl' foze viderimus faciend' & hoc mullatenus omittas sub pena octoginta libearum Teste J. Keyling mil apud Westm' 11 die Maii anno regni noftri decimo nono Per cur'.

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ff. Executio istius brevis patet in quadam schedula huic bzebi anner'.

> Martinus Headley seneschallus libertat' honozis de Pontefract in com' Eborum.

The Return rari.

Ad magnam curiam cum turno visus franci of the Certio- plegit & cut' let' perercellentistime Paincipis Henriettæ Mariæ Dotissæ Reginæ Angliæ e mas tris Domini Regis nunc tent' pzo libertate Wapentagii De Skyrach parcell' Honor' pzedia' apud Seacrost infra Honorem predict' in com' predict infra unum mensem pror' post festum Sand Mich' scilt' decimo septimo die Octob' anno regni Dom' nostri Caroli secundi Dei gratia Angl', &c. Regis fidei Defensozis, &c. Decimo octavo cozam Martino Headley generoso seneschallo curie Honoris predict per sacramens tum Will'i Robertson (and eleven more, naming them) duoderim jur' proposum & legalium ho minum inhabitan' & residen' infra Wapentag' predid' & Honor' pred' jurat' & onerat' per pred' feneschallum curie predia' ad inquirendum & presentandum ea omnia & lingula que ad ens riam predictam speciant & pertinent presenta-tum eristit qued Georgius Dickenson nuper be Seacrost predict' infra Honorem pred' peoman ante 13

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ante hanc curtam scilt' decimo die Octob' anno Presentment regni Domini Caroli secundi nunc Regis Ang. at a Leet for lia, ec. decimo odavo in & super quodoam inclosing and clausum dide Domine Regine Dotisse vocat' encroaching. Seacrost Moor apud Seacrost pred' ac infra jus say it was risdictionem curie pzed' bi & armis incroachi built for Haabit & unam todam terre predicti clauft adtunc bitation. f ibidem bi & armis & cum quibusdam sepibus + It ought to fodina injuste & illicite inclusit & unum \* conclude concottagium super parcell' terre predict' fic ut tra formam inclusam adtunc & ibidem bi & armis ererit flatuti, &c. ad commune nocumentum dice Domine Hen- \* This is only riette Marie Dotiffe Regine & omnium tithas a particular bitantium ville de Seacrost pred' + contra pas Trespass for cem dici Domini Regis nunc cozonam & dig- which the Denitatem suas Ideo pred Georgius in \* mise fendant is not ricozdia & amerciamentum inde afferatum per tobeamerced Johan Edmonds & Will'um Wright afferatozes that being in eadem curia medo adinde clea & jurat' ad for a publick triginta & novem folidos.

Nusance.

# (31.) Declaration by an Executor for Arrears of a Rent-Service.

Ebor. ff. R. S. nuper de, &c. in com' predict' Services.
gen' summonitus fuit ad respons Debt for dend' G. G. Wiliti de placito quod reddat et Rent, &. 10 libzas quas ei vebet & injufte betinet, et. Et unde ibem G. G. per M. M. attozn' fuum bicit quod cum pzebia' G. G. seisit' fuit be manerio be B. cum pertin' in comitatu predico The Plaintiff in dominico suo nt de feodo ac predictus R S. was seised in suit seisstus de uno messagio, &c. cum pertin' Fee of the in B. predict in dominico suo ut de feodo & Manor of B. eadem tenementa cum pertin' tenuit de pred' G. G. nt be manerio ino predicto per fivelitas 13 tem

#### Appendix of Pleadings in

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Services. feised in Fee of a Messuage held of the faid Manor by Fcal-Rent, &c. Was Arrear.

tem & redditum 20 s. ad festa Wentecostes & And the De- Sancti Martini in hieme per equales posti-fendant was ones annuatim & quolibet anno solvendum predictoque G. G. Wilite de manerio predicto cum pertin' in fozma predicta feisit' eriften' des cem libre de redditu predia' pro decem annis finit' ad festum Sandi Martini in hieme anno ty, and 20 s. regni Domini Regis nunc undecimo prefat G.G. aretro extiterunt & non folut per quod which Rent actio accrebit eidem G. G. modo queren' ad eris gend' & habend' de eodem R. S. predia' decem libras predicus tamen R. S. licet sepius requisit' easdem decem libras prefat' G. G. nondum folvit sed illas prefat' G. G. solvere omnino contradirit & adhuc contradicit & injuste detinet unde dicit quod deteriozat' est & dampnum has bet ad valenciam, &c.

# (32.) Declaration for rescuing Cattle distrained for Customs and Services.

Trespass.

Distress for Services.

Rescous of the Cattle in driving to the Pound.

Wilts, ff G. nuper be H. in com' pzedia' • gen' attachiatus fuit ad responbend' P. H. de C. in com' pred' gen' be placito quare cum pred' P. H. in feodo suo apud Cuftoms and C. predict pro consuetudinibus & ferbiciis fibi pebitis per T. A. ballibum suum quedam aberia capi fecisset & idem T. A. aberia illa secuns dum legem & consuctudinem regni Domini Regis Magnæ Britanniæ ibidem imparcare boluisset predictus T. G. averia illa bi e armis rescussit e alia enormia ei intulit ab grave dampnum iplius P. H. & contra pacem Domini Regis nunc e unde idem P. H. per L. R. attomatum suum querifue quare cum idem P. H. Decimo L

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H. mo becimo odabo bie Febr' anno regni Domini Services. Regis munc, &c. undecimo in feodo suo bidelt' in uno meduagio e uno gardino suo cum pers tin' in C. paed' que quidem tenementa paedic' cum pertin' predic' T. G. tunc tenuit de ipfo P. per fidelitatem ut redditum decem folidozum fins gulis annis ad festa Sancti Mich' Arch'i & Paschæ per equales pozitiones solvend' de quibus ferbitiis idem P. fuit feisitus per manus paes didi T. G. ut per manus veri tenentis sui per consuetud' & servitia videlt' per decem solidos eidem P. p20 uno anno integro finit' ad festum Sandi Mich'is Arch'i paor' ante paedidum Des cimum ocabum diem Febr' anno undecimo supradido debit' per pred' T. A. ballibum suum quedam aberia videlt' duas vaccas nomine districtionis capi fecisset & idem T. A. aberia illa fecundum legem & confuetud' regni Dom' Reg' Magnæ Britanniæ ibidem imparcare volus illet pred' T. G. predicto undecimo die Febr' ans no undecimo supzadido aberia illa rescussit & alia enozmia ei intulit ad grave dampnum, Ac. & contra pacem, Ac. unde dicit quod detes riozat' est, &c.

Et pred' T. G. per M. M. attorn' suum ven' The Defene befend' bim e injuriam quando, et. e quoad dant pleads benire bi & armis & quicquid contra pacem in Bar, that dicit quod non est culpabils & de boc ponit se the Diftress fuper patriam, &c. & quoad reliduum tranf was taken by gressionis predict' superius fieri supposit ibem the Plaintiff T. G. dieit quod pred' P. actionem fuam predict out of his versus prefat' T. G. habere non debet quia dicit quod tenementa predicta cum pertin funt & pzedido tempoze quo supponitur transgresson' predictam fieri fuerunt extra feodum & dominium ipfius P. & boc parat' eft berificare, &c.

Et pred' P. Dicit quod ipfe per aliqua per Replication pred' T. G. superius placitando allegat' ab acti and Iffue, one fua pred' inde versus prefat' T. G. habend' that the Teprecludi not debet quia dicit quod tenementa nements predicta cum pertinen' funt & predicto tempore were within transgreftionis pred' fad' fuerunt infra feodum the Fee, &c. & dominium ipsius P. prout idem P. per breve

136 Services.

## Appendix of Pleadings by a

a narrationem fuam predia' fuperius fuppon's hoc petit quod inquiratur per patriam, ec.

## (33.) Nevill versus Rede.

Court brought an Action of Annuity.

Steward of a London, fl. R I'cus Rede nuper be Beddington in com' Glouc' armiger fummonitus fuit ad respondend' Will'o Nevill ar' de placito quod reddat ei 14, &c. libzas quas Debt for the ei aretro fuerunt de annuo redditu viginti & Arrears of an fer folidozum quem et bebet, &c. & unde ibem Will'us dicit quod cum predidus Ricus 9 die Februarii anno regni Domini Regis nunc Des cimo apud London predici in parochia Sanci Dunstani in Decidente in warda de Farringdon extra per quoddam feriptum fuum quod idem Will'us sigillo predict' Rici signat' hic in curia profert cujus dat' elt eisdem die & anno des distet & concessisset & per idem scriptum suum consirmasset pzefat' Will'o per nomen Will' Nevill ar' annuum redditum predidum per nomen enjusbam annuitatis libe annui redditus viginti & sex solidozum bone & legalis monete Magnæ Britanniæ folbend' eidem Will'o bet als lignatis suis annuatim ad festa Sancti Mich'is Arch't & annunciation' beate Maria Virginis per Grant of an equales portiones ac etiam bediffet & concessife Annuity, fet eibem Will'o officium seneschalli buarum partium manerii sui de A. in com' Warr' quas tenuit in coparcenaria cum filiabus & heredis for Life, with bus Ed'ri Willoughby ar' Defuncti cum annut tate pred' pro officio illo epercendo habendum e tenendum annuitatem predictam una cum officio predict eidem Will'o pro termino vite

and the Stewardship Diffress, if the Annuity was in Arrear.

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m te ro 20 fore in parte bel in toto post aliquod festum Steward of predictorum festorum quo folbi deberet quod a Court tune bene liceret paefat' Will'o Nevill & af brought an sign' suis in omnia tenementa & terras ipsius Action of Rici intrare & distringere ac districtiones sic Arrears of inde capt' effugare & penes se retinere quous an Annuity. que de predicta annuitate & arreragiis eisdem fi que fuerunt plenarie fozent satisfaci & perfolut' dans & concedens eidem Will'o plenam potestatem & authozitatem omnia & lingula que ad officium pred' rite & de jure pertinerent ers equend' prout in eodem scripto inter alia constinctur Et idem Will'us dicit quod ipse cons tinue a die confectionis scripti predict hucus That he exeque officium seneschalli duarum partium prediction cuted the manerit de A. virtute donationis & concessio Office. nis predia' exercuit & occupabit & fuit feisitus be annuo redditu pzedido in dominico suo ut de libero tenemento usque novem annos intes gros finit' ad festum annunciationis beate Marix Virginis paor' ante diem impetrationis baes bis oziginalis ipuus Will'i feilt' 9 biem Februarii anno regni Domini Regis nunc, &c. & quod predic' Ricus annualem redditum predic' cidem Will's subtrapit ac illum ei reddere contradirit & adduc contradicit unde idem Will'us dicit quod deteriozat' eft & dampnum habet ad valenciam 50 1. & inde producit sectant, &c.

### american schemeted units as untill castell (34.) Anonymus.

Policis detra pischo C. D. queritur de H. B. in cultodia mar' For disturb-maresc' Domini Reg' cozam ipso Rege ing the Plaineristen' p20 eo bibelt' quod cum Domina Matisf to exertia nuper Regina Angliæ \* per literas suas patisfice of Deputentes geren' datum apud Westm' 17 die Jan ty-Steward, anno &c.

\* The Charter, &c. of Incorporation.

### Appendix of Pleadings for

For difturbing the Plaintiff to exercise his Office of Deputy-Steward, &c.

anno regni sui pzimo voluit ozdinavit constituit a concessit a per easdem literas suas pa tentes pro fe heredibus & successozibus suis ozdinavit constituit declaravit & concessit quod villa & parochia de Buckingham in dico com' B. sit & esset liber burgus corporat' in re face \* nomine in perpetuum de uno ballibo a duo decim burgensibus per nomina Wallibozum e Burgenstum Burgi & paroch' de B. in comitatu B. predia' perpetuis futuris temporibus du ratur' a quod ballibus a burgenses eorundem burgi & paroch' pzo tempoze existen' de cetero in perpetuum lit & ellet cozpus cozpozatum t unum coapus perpet in re & nomine & habe rent successionem in perpetuum quodque iidem vallivi a burgenses a successores haveant a hai berent commune figillum pro omnibus & fin gulis negotiis suis agend' & tradand' ac quod bene liceat & liceret eis & luccellozibus fuis fi gillum illud ad libertatem frangere mutare a novum facere Ac etiam quod in dido burgo # parochia de B. lit & ellet unus officiarius qui \* The Stew- vocaretur & effet \* feneschallus ejusdem burgi ard constitu- ad omnia & singula que ad officium suum pers tinerent & pertinere debent faciend' & ere quend' super sacramentum suum justiciam & alia que ad officium seneschalli pertinent aut pertinere debent exercend' faciend' & exeguend' per se vel sufficientem + deputatum suum vel deputatos suos Duodque predict' ballibus & burs genses burgi e paroch' de B. pzed' e successozes sui haberent ac tenerent ac habere & tenere valerent & potuerunt quandam \* curiam cozam ballivo tribus burgens' & seneschallo burgi & paroch' predict' vel ejus deputat' pro tempore eritten' in quadam communi aula vel alio loco in eodem burgo convenienti de † tribus septimanis in tres septimanas tenend in per petuum & quod idem ballibus tres burgenses A seneschallus vel eius sufficiens deputatus ha termineAdi- berent plenam potestatem audiend' determi nand' in eadem curia per querelam in eadem Plaints levi- levand' omnia & fingula placita querelas & adb ones de omnibus & omnimodis debitis compus

ted by the Charter.

† Power to make a Deputy.

\* Power to keep Court.

† Every 3 Weeks.

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tat' conventionibus contradis transgremonibus For diffurbvi & armis seu aliter in contemptum dice nus ing the per Domine Regine vel heredum suozum kad' Plaintiff to debit' detention' vetito namio & aliis rebus & exercise his actionibus realibus personalibus & mirtis qui Office of buscunque infra pzedidum burgum e parochi Deputyam de Buckingham limites bundos & libertates Steward, &c. ejusdem quovismodo emergen' live contingen' dummodo eadem debita comput' conventiones And hold contradus transgressiones & alie actiones non Pleas not exercederent summas vel valozem quinque libzas ceeding 5%. rum & super hujusmodi querimoniis placitis & actionibus haberent potestatem authozitatem & facultatem person' defend' versus quos hujulmodi querele placita live actiones in predict' curia lebari bel moneri contingent in placi- And to fumtum ducere per summonitionem attachiament' mon the Dea districtionem secundum leges a consuctudines fendants. regni Anglia & p20 defedu catallozum & ters rarum hujusmodi defend' infra burgum & li= mites bundas & libertates ejusdem ubi five per quod attach' fummon' bel diffring' poffint per attachiamenta cozpozum suozum e pzedici omnia & fingula separatim & per confilia p20= cessum & considerationem & judicium & execution' in judicio deducere & determinare per que consilia in curia nostra in Com' Banco cozam justiciariis nostris ejusdem curie dedus ccrentur & determinarentur Ac ea & singula lecundum exigentium ac leges Catuta & consuetudines Reani Angliz de tempoze in tems pus infra didum burgum & parochiam Buckingham audiend' & terminand' Ac etiam dida Regina voluit & ulterius p20 se & heres dibus & successozibus suis concessit prefat ballibo & burgensibus dicti burgi & paroch' de Buckingham & successozibus suis quod quoties & quandoquidem contingeret seneschallum dicti burgi & paroch' pao tempose eritten' obire bel pro aliqua causa rationabili amoveri quod tunc toties bene liceret ballivo & burgenlibus didi burgi a paroch' a majozi parti eozundem burs gensium pzo tempoze existen de tempoze in tempus cum & quandocunque ets placeret & erpediens

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For disturbing the Plaintiff to exercise his Office of Deputy-Steward, &c.

Upon the Death or chuse another during fo chosen is to take his Oath faithfully to execute his Office. That George

D. of Bucks was chosen Steward after the Amotion of

And was fworn into the Office.

ervediens videretur in dida communi aula vel domo infra eundem burgum ad libertatem suam convenire infra odo dies prorimos sequentes moztem sive amotionem didi seneschalli & ibi dem nominare & eligere unam aliam perso nam & probum virum fore & elle seneschallum dicti burgi & parochie de Buckingham durante vita sua seu aliter prout ballivo & burgensibus dicti burgi de Buckingham aut majozi parti Removal of coundem pao tempoze existente videretur exa Steward, to pediens & quod quelibet persona sic nominata e elect' ad seneschallum pred' burgi & parochie predict' facramentum caperet & prestaret cor The Steward pozal' cozam ballivo burgi & parochie ill' ad justitiam a alia que ad officium seneschalli pres dictozum burgi a paroch' bene a sideliter per se vel deputatum suum sufficientum exercend pertin' faciend' prout per literas dide Domine Regine patentes de recozdo remanentes inter alia plenius liquet & apparet & idem C. D. in facto dicit and Georgius Dux Buckingham bir tute literarum patentium predic' vicelimo die Julii anno regni, ec. post amotionem Car' Fleetwood armigeri nuper seneschalli burgi & pas rochie pzed' in communi aula infra pzed' bur Charles Fleet- gum & parochiam de Buck' pred' per ballibum wood. & burgenses burgi & paroch' pred' debito modo nominatus & electus fuit seneschallus burgi & paroch' paco' & idem Georgius Dux Buck' sic eledus eodem vicesimo die Julii anno, &c. in communi aula infea burgum predictum coram J. H. ballivo burgi & paroch' pzedid' facramentum fuum cozpozal pzestifit & cepit ad justi tiam & alia que ad officium seneschalli ipsorum burgi & paroch' bene & fideliter per se vel sufficientem deputatum exercend' pertine ret faciend' Mirtute cujus idem Dux Buckingham adtunc & ibidem feisitus fuit de officio seneschalli pred' burgi & paroch' cum omnibus feodis proficuis advantagiis & emolumentis el dem officio speciantibus & pertinentibus pro termino vite sue Ipseque Dux Buckingham sic in pollemone feifitus existens idem Dux pollea feilt' 26 die Julii anno regni, ec. apud B. pred'

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in com' pred' per quoddam feriptum fuum fis For difturbgillo iplius ducis ligillatum cujus dat' eft eis ing the dem die & anno fecit constituit & ordinabit Plaintiff to predict' C. D. Deputatum fuum feneschallum exercise his predict C. D. deputatum munt tenenthand Office of burgi & paroch' pred habend tenend & occus Office of Deputypand & exercend per insum C. D. pro ter Steward, &c. mino vite iplius ducis percipiend' durante ter- The Plaintiff mino predicto pro officio predicto exercend' oms made Deputy mia feoda & proficua eidem officio (pedan' prout Steward for per idem feriptum plenius apparet Mictute Life. cujus idem C. D. existens vir probus & idos By Virtue neus ad officium predict exercendum & oc us whereof he rand' fuit & adhuc existit deputatus predict' was seised of Georgii Ducis Buck' seneschalli predict' burgi & the faid Ofparochie una cum omnibus feodis regardis fice. proficuis commoditatibus & advantagiis officio deputat' adinde quovismodo specian' sive pertis nen' seisitus in dominico suo ut de libero tes nemento pro termino vite iplius ducis ad off. cum pred exercendum & occupandum birtute deputationis pred' eidem C. D. in forma pred' face & idem C. D. offcium illud habuisset & exercuife debuiffet & debet pred' tamen H. B. premissorum non ignarus sed machinans ips fum C. D. de officio suo predicto ut deputat' predicti ducis seneschalli pred' burgi & paroch' de B. pred' & de vadis feodis cum omnibus proficuls a advantagiis provenientibus er officio predicto a emolumentis officii pred' totalis ter decipere & defraudare excludere & impes But the Dedire 24 die Februarii anno regni, &c. & conti- fendant obmie poffea hucusque vivelt' 27 die Apr' anno, itructed him apud B. gc. ipfum C. D. officio illo per in the Exetotum idem tempus exercere volentem obtus cution therelentem & attendentem eundem C. D. in eres of. cutione officii pred' impedibit & diffurbabit And unjuftly necnon ident H. B. officium predictum minus and contrary juste & contra voluntatem ipsius C. D. adiunt to the Will of still' predicto 24 die Febr' anno regni, &c. & the Plaintiff, continue postea usque predictum 27 diem Apr' himself the anno, &c. apud B. pred' in com' predict super Execution se inique suscept & allumpsit & fanguam des le inique suscepit & allumplit & tanquam De thereof, and putatus predict' ducis feneschalli pred' burgt & intruded paroch de B. predia' illicite exercuit & in offic therein.

ing the Plaintiff to exercise his Office of Deputy-Steward, &c. And received the Profits which be-Plaintiff.

For diffurb-cio illo ibidem le intromisit & infra tempus pred' quamplurima bada feoda proficua e ab vantagia & emolumenta ad ipsum C. D. ut des putat' predict' ducis Bucks feneschalli predict' burgi e paroch' de Bucks' e modo deputat fuum debite specian' & pertinen' ratione deputat' live officii predict' fine licentia consensu bel agreamento ejusbem C. D. apub Bucks pzed' in comitatu pzedicto habuit recepit & col longed to the lexit & in ulum luum proprium convertit & bisposuit quozum pzemissozum pzetertu pzedia C. D. tam omnia & fingula bada feoda proficua advantagia & commoditates pred' quam etiani nonnulla alia feoda proficua e advanta gia aftingentia ad diversas ingentes summas pecunie que infra tempus pred' iple idem C. D. ratione officii pred' & executionis inde habere & lucrare potuiffet totaliter perdid' # amilit unde idem C. D. dicit quod deteriozatus eft & dampnum habet ad valenciam, &c.

### (35.) Wade versus Bache.

Surrender void. Surrender. (A) pl. 18.

Middx. fl. M Emozandum quod alias fcill' termino Sande Trin' ultimo See the Re- preterito coram Domino Rege apud Weltm port of this ven' Johannes Wade per Johannem Stone attorn' Case in Tit. suum & protulit hic in curia dicti Domini Regis quandam villam suam versus Simonem Bache alias via' Simon' Bache of Suckley in the County of Worcefter Gen' in cuftod' mar', et. De placito bebiti & funt pleg' de pros' feilt' Johannes Doe & Ri'cus Roe que quitem billa fequitur in hec berba.

ff. Johannes Wade queritur be Simon' Bache Debt for 3001. alias bin' Simon' Bache of Suckley in the Counon Bond.

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ty of Worcester Gent' in custodia mar' marest' Surrender Domini Regis cozam iplo Rege eriften' de void. placito quod reddat ei trescentas libras legalis monete Angliæ quas ei debet & injuste detinet p20 eo videlt' quod cum predict' Sim' 26 die Januarii anno Domini 1653 apud paroch' Sandi Clementis Dacorum in com' Middlesex previet per quoddam scriptum suum obligatorium liaillo iplius limonis ligillat' curieque didi Domini Regis nunc hic oftens' cujus dat' est die & anno supradici cognobit se teneri & sirmiter obligari presat' Johan' Wade in pred' trescentis libris solvend' eidem Johanni Wade cum inde requilitus effet predict' tamen Sim' Bache licet sepius requisit, ac. predict 300 l. prefat' Johanni Wade nondum solvit sed ill' et hucusque solvere omnino contradirit & adhuc contradicit ad dampnum ipsius Johannis 30 l. f inde paoduc' fedam, fc.

Et modo ad hunc diem scilt' diem Jovis Imparlance. pror' post Octa' Sancti Hillarii isto eodem ter-mino usque quem diem predict' Simon habuit licentiam ad billam pred' interloquendum & tunc ad respondend', &c. cozam Domino Rege apud Westm' ben' fam predict' Johannes Wade per attoan' suum paed' quam paed' Simon per Oyer of the Hugonem Gamlin attorn' fuum & idem Simon Bond. defend vim & injuriam quando, &c. & petit aus ditum scripti obligatozii pzed' & ei legitur, &c. petit etiam auditum conditionis ejusdem scrips ti obligatozii & ei legitur in hec verba.

Here the Condition of the Bond was recited, Conditioned which was, That Bache should surrender a Copy- to surrender hold to Wade and his Heirs at the next Court; a Copyhold and should procure him to be admitted, and Estate of the that he should quietly enjoy without any Distur- Plaintiff. bance from Bache or Lancelot Simons, &c.

Duibus ledis & auditis idem Simon dicit quod pred' Johannes actionem fuam predict' inde versus eum habere seu manutunere non debet quia dicit quod pror' cur' post confectionem scripti obligatozii pzed' pzo manerio de Wimble-

den

Surrender void.

The Defendant pleads he did furnext Court,

den (in the Condition mentioned) tent' fuit in fra manerium pzedia' 4 die Aprilis anno Do mini 1654 Ab quem diem ipfe idem Simon in curia predict furfum reddidit in manus cu jusdam Johan' Lambert ar' adtunc existentis renderatthe Dom' manerit de Wimbleden pred' meffuagi um in conditione pred' mentionat' cum omnis bus atriis gardinis curiis Anglice Backsides viis ealiamentis proficuis & commoditatibus quibuscunque eidem messuagio spedan' ad opus to the Use of & usum pred' Johannis Wade hered' & assign'

who was admitted,

and quietly

the Plaintiff, suozum cui quidem Johanni ad eandem curis am didus Dominus manerii per seneschallum fuum concessit tenementa predict' cum pertin' habend' & tenend' prefato Johanni heredibus & affign' suis ad voluntatem Domiui secundum consuctudinem manerii pred' & ipse idem Johannes tunc in curia admissus fuit solus tenen' tenement' paed' fic ut paefertur furfum reddit' fecundum confuetudinem manerit pzed' Duod que ad omnia tempoza post confectionem surs fum reddition' predit' prefat' Johannes legitis enjoyed the me pacifice & quiete habuit tenuit & gavilus Premisses. est ten'ta previd' cum pertin' absque aliquo impedimento seda perturbatione seu interruptione pred' Simonis Bache & Lancelot Simons in conditione pred' nominat' seu alterius eorum seu heredum alterius eozum executozum bel administratozum seu asign' aut aliquarum person' seu personarum legitime claman' seu qui legitime clamare potuerunt aliquem Catum reaum titulum aut intereste de a in aut ex premiffs predict' aut aliqua parte inde per be aut subter previd' Simonem aut Lancelotum aut alterum eozum aut alterus eozum hered' administratoz' aut affign' fecundum fozmam & effectum conditionis predic' & hoc parat' eft verificare unde petit judicium fi pzedia' Johannes actionem fuam predict' inde berfus eum habere seu manutenere debeat, &c.

Replication.

Et predict Johannes Wade Dicit quod iple per aliqua per prefat' Simonem superius placitando allegat' ab actione sua predict inde bersus ip sum Simonem pzecludi non debet quia dicit quod

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aucd messuagium predia' in conditione predia' Surrender mentionat' est & a toto tempoze cujus cons void. frar' memozia hominum non existit fuit pars That the cell' manerit de Wimbleden pred' at Dimis & Meffuage is diminibil' per copiam rotulozum curie mane: Copyhold. rii illius per Dominum manerii pzedia' bel per seneschallum suum cjusdem manerii p20 tempoze existen cuicunque persone sibe quis buscunque personis idem capere volenti vel belentibus in feodo simplici seu ad terminum bite bel annozum ad voluntatem Domini secundum consuetudinem manerii pacdid' & paed' Johannes ulterius dicit quod din ante confectionem fcripti obligatogii predia' quidam Edr'us That Edw. Cecill ar' fuit feilitus De manerio predict' rum Cecill was vertin' unde, er. in dominico suo ut de feodo formerly & fic inde feifit' eriften' idem Edr'us Cecill pos Lord of the stea & ante confection' scripti obligatozii pred faid Manor, scilt' ad cur' baronis manerii pred tent' apud made a Grant Putney infea manerium ill' 8 die Aprilis anno to Patience Dom' Jacobi nuper Regis Anglia 22 Huffey for tozam Will'o Langhorn gen' adtunc seneschallo Life. manerit illius per copiam rotulozum curie Remainder cjusdem manerii concent meffungium predict to Lancelot cum pertin' cuidant Patientiæ Hufley p20 ter. Fee. mino vitæ fuæ ac remanere inde post decessum By Virtue ejusbem Patientiæ prefat' Lanceloto Simons & whereof the heredibus fuis in perpetuum Mirtute cujus faid Patience quident concessionis eadem Patentia in mellitas was feised of gium predia' cum pertinentits intravit & fuit a Freehold inde seisita in dominico suo ut de libero tenes for Life. mento pro termino vite sue ad voluntatem Do- Remainder mini fecundum consuetudinem manerii predict' to Lancelot remanere inde prefat' Lanceloto Simonds & hes Simonds. redibus fuis fpedan' predictaque Patientia fic inde feisita existen' ac remanere inde prefato Lanceloto Simonds & heredibus fuis in forma predict' fpecan' ibem Lancelot poffea feilt' ad curiam baronis prenobilis Henrici Comitis Holland Johan' Winter militis & baron' & Rici Lan elot Si-Wynn militis & baron' adfunc Dominozum monds furmanerii predict' tent' apud Mortlake infca mas rendered his nerium illud 27 die Augusti anno regni dicti Remainder Domini Caroli nuper Regis Angliæ primi 17 to Patience K

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Surrender void. because she had an Estate for Life before. Remainder Remainder to Lancelot

Fane were admitted. Lancelot and Patiene died.

Fane Simons claimed an Estate for Lancelot : And entered.

cozam Ed' Matthews gen' adtunc seneschasses curie manerii illius venit & sursum reddidit in This Surren- manus Dominozum manerii remanere suum der is void, pred' de & in messuagio pred' cum pertin' inter alia ad opus & ulum prefat' Domine Patientiæ Huffey pao a duran' termino bite sue naturalis & post eius decessum ad ovus & usum pred' Lanceloti Simons & Janæ Simons tunc ur: ogis ejus pao & durante termino vitarum fuaand Jane his rum naturalium & alterius cozum Diutius bis wife for Life. ventis & post ejus decessum ad opus & usum hered' & affign' predicti Lanceloti in perpetuum Dui quidem Lancelot & Jana adtunc presentes and his Heirs. in cadem curia in proprits perfonis fuis per Nota, It was tierunt fe admitti ad remanere predict' cum objected, that pertinentits in meduagio pred' jurta formam der of these & effectum sursum reddition' pred' Duibus Do-Remainders mini manerii pzedici per seneschallum suum was void, be- pred' concesserunt inde feisinam per copiam caufe it was rotulozum curie ilitus habend' & tenend' eisbem limited upon Lanceloto & Jana & heredibus prefat' Lanceloti a void Estate in perpetuum ad voluntat' Dominozum ses for Life in cundum cons' manerii pzed' jurta sozmam & the Creation. effectum sursum redditionis pred' Et pred' Johannes Bache ulterius dicit quod pred' Lan' Simons & Domina Patientia Huffey poftea ante Lancelot and confectionem feripti obligatorii pred' feilt' I Die Martii anno Domini 1652 apud parochiam pred' in comitatu pred' obierunt & uterque eo rum obiit Ct pacoid' Johannes Wade ulterius dicit qued post confectionem scripti obligatozii pred' necnon post fursum reddition' messuagia pred' per predict' Simonem Bache eidem Johan' Wade in forma pred' feilt' pred' 25 die Febr anno Demini Caroli secundi nunc Regis Angliæ, ec. decimo nono predicta Jana Simons clas mans jus & titulum ad mefluagium predic cum pertin' pao tempoze bite fue fubter paefat Life, by Vir- Lancelot' virtute sursum redditionis predict' per tue of the presat' Lancelot in somma pred fact in messual surrender of given pred cum pertin' super possessionem in gium pred' cum pertin' fuper polleffonem ip fius Johannis Wade inde intravit & ipfum Johannem Wade postessone sua inde expulit t amobit & fuit & adhue est seisit' inde in Dos minico suo ut de libero tenemento pas termis no vite sue ad voluntatem Domini secundum Surrender consuetud' manerii pred' & hot idem Johannes void. Wade paratus est verificare unde petit judicis um & devitum suum pred' una cum damnis suis occasione detentionis deviti illius sibi ads

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Et viedit' Simon Bache dicit quod placitum Demurrer pred' per ipsum Johan' Wade modo & forma pred' special to the superius replicando placitat' materiaque in co: Replication. dem content' minus sufficien' in lege existant ad ipfum Johannem Wade ad actionem fuam vzed inde versus Simonem habend manutenend ad quod idem Simon necesse non habet nec per legem terre tenetur aliquo modo respondere & hoc parat' eft berificare unde pro defectu fuffis cien replicationis in hac parte idem Simon ut prius petit judicium & quod pred' Johan' Wade ab actione fua pred' inde verfus tpfum Simo- Caufe affigninem habend' precludatur & pro causis moratio, ed. nis in lege super placit' ill' idem Simon secuns dum formam ikatuti in hujusmodi casu nuper edit & provis offendit & curie hic demonstrat causas sublequen' videlt' eo qued non apparet per narrationem nec per replicationem predict Johannis quod pred Jana unquam habuit bonum a legale titulum ad terras a tenementa in cons ditione scripti obligatozii pzed' mentionat' & quod pred' replicatio non est susscien' pro es quod predict Johannes non negavit nec destruit titulum pred' Simon' Bache, &c. Et predict Johannes Wade Dic' quod placitum Joinder in

Et predict Johannes Wade dic quod placitum Joinder in pred' per. ipsum Johannem Wade modo & sorma Demurrer. pred' superius replicando placitat materiaque in eodem content bonum & sussicien in lege existunt ad ipsum Johan Wade ad actionem ipsus Johan Wade pred' inde versus ipsum Simonem habend manutenend quod placitum materiamque in codem content idem Johan Wade paratus est veriscare & probare prout custia, &c. Et quia pred' Simon ad placitum illud non respond nec ill' hucusque aliqualiter dedicit idem Johannes Wade ut prius petit judicium & debitum suum pred' una cum damnis suis octalione detentionis debiti illius sibi adjudicari.

### Appendix of Pleadings

Surrender void. ac. sed quia curia dicti Domini Regis hic de judicio suo de & super premiss reddend' nondum advisatur dies inde dat'est partibus pred' cozam Domino Rege apud Westm' usque biem fabbati por' polt quindenam Bafch' por' fequen' de judicio suo de & super premiss au-biend' eo quod curia diai Domini Regis hic inde nondum, ac. Ad quem diem cozam Domino Rege arud Westm' ben' tam pred' Johannes Wade per attoan' fuum paedid' quam paedid' Sim' Bache per attorn' fuum pred' fuper quo vifis & per cur' dict Domini Regis hic plenius intellectis omnibus & fingulis pzemiffs maturaq' beliberatione inde habita pro eo quod bibetur curie Dom' Reg' hic quod placitum predict' per ipfum Johan' Wade modo & foama paed' fupe: rius replicando placitat' materiaque in eodem content' bonum & fufficien' in lege existunt ad ipfum Johan' Wade ad actionem fuam predict' versus ipsum Simonem in forma pred' habend' manutenend, ec. Ideo consideratum est quod pred' Johan' Wade recuperet versus ipsum Simon' Bache debitum suum pred' necnon quatuor libras pro damnis suis que sustinuit fam occatione Detentionis Debiti ill'quam pao milis e custagiis suis per ipsum circa sedam suam in hac parte apposit' eidem Johanni per curiam dicti Dom' Regis nunc hic ex assensu suo adjudicat' & pzedict' Simon Bache in misericoz-Dia, Ac. are and the confidence of the

Judgment for the Defendant. au

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### (36.) Clerke versus Smith.

Lincoln, fl. F. Ranciscus Smith nuper de Bourn Surrender, in com' pred' Tanner attachiatus &c. that the fuit ad respondendum Jacob' Clerke de placito Lands were quare bi & armis unum melluagium unum Copyhold, hogreum unum Stabulum unum gardinum unum and furrenpomarium viginti acras terre viginti acras dered. patt & triginta acras paffure cum pertinen' Ejectment. in Bicker & Wigtoft in com' pred' que Harry See the Re-Cason & Maria uroz ejus & Theophilus Joyner port of this Martha uroz ejus eidem Jacobo dimiserunt Case in Tit. ad terminum qui nondum preteriti intradit & Surrenders. ipsum a sirma sua predict ejecit & alia enoze (A) pl. 47mia ei intulit ad grave damnum ipsius Jacobi & contra pacem Domini Regis nunc, &c. & unde idem Jacobus per Marcum Dickenson attoan' fuum queritur quod paed' Harry & Maria Theophilus & Martha primo die Jan' anno rege ni Domini Gulielmi tertii nunc Regis Anglia, ac. nono apud Bicker predict dimilitent eidem Jacobo tenementa pred' cum pertinen' habend' e occupand' tenementa predicta cum pertinen' eidem Jacobo e affign' suis a 25 die Decemb' tunc ult' pzeterito ufque finem & terminum quinque annozum ertunc paor' fequen' & plenar' complend' & finiend' Airtute cujus dimilsionis idem Jacobus in ten'ta pred' cum pertin' intravit & fuit inde possessionat' Ipsoque Jacobo sic inde possession' existen' pred Franciscus postea scilt' predicto primo die Januarii anno nono supradicto vi & armis, &c. in tenes menta predicta cum pertinentiis que prefat Harry & Maria Theophilus & Martha eidem, Jacobo in forma predicta dimiserunt ad terminum qui nondum pzeteriit intravit & ipfum Jacobum a firma sua predicta ejecit a alia enormia zi intulit ad grave damnum iplius Jacobi & K 3 contra

Surrender, &c. that the Lands were Copyhold, and furrendered. The Plea.

Surrender, contra pacem, &c. & unde dicit quod deterioza-&c. that the tus est & damnum habet ad valentiam viginti Lands were libzarum & inde producit sectam, &c.

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Lincoln

Ot nzed Franc'us per Tho' Truesdale attozn' suum ben' & Defend' bim & injur' quando, &c. Et Dicit quod ipse in nullo est culpabilis de trans gressione & ejectione pred' prout pred' lacobus superius versus eum queritur & de hoc ponit se super patriam & pzed' Jacobus similiter Idea precept'est vic' go' venire faciat his in Octab' pur' beate Mar' duodecim', ec. per quos, ec. & quia nec, ec. ab recogn', ec. quia fam, ec. Ab quem biem Jurata inter partes pred' de placito pred' polita fuit inde inter eas in respect his usque ad buns viem scilt' a die Paschæ in quinderim dies tunc pror' sequen' nist Justic' Dom' Reg' ad assiss in com' pred' capiend' per formam Catuti, ec. die lune decimo tertio die Maii por preterit apud castrum Lincoln' in com' predia' prius ben's modo hie ad hune diem benerunt tam pred' Jacob' quam pred' Franc'us per attorn' fuos predictos & prefat' justic' ad affisas coram, ec. mis' hic recozoum suum in hec verba postea vie & loco infra content' cozam Johanne Turton Dil' un' jufticiar' Dom' Regis ad placita cozam iplo Rege tenend' afign' & Geo' Dodson Ar' eidem Johan Turton & Ed'ro Nevill Bill' un' justiciar' Dom' Reg' de banco jus fticiariis iplius Dom' Reg' ad afffas in com' Lincoln' capiend' affign' per formam ftatuti, ec. hac vice affociat' prefentia pred' Ed'ri Nevill virtute bzevis dicti Dom' Reg' de si non omnes, &c. venerunt tam infra nominatus Jacobus Clerke quam infrascript' Franc'us Smith per attoan' suos infracontent' Et jur' jurate unde infra fit mentio eract' fimiliter benerunt qui ad veritatem de infracontentis dicend' electi triat' & jurat' dicunt super facr'um fuum Duod quindecim acre terre decem acr' pati cell' tenementozum in narratione infrascript' interius mentionat' sunt & a tempoze cujus

contrarit memozia hominum non epistit fuerunt parcell' manerit de Bicker Beamont in com-

Nifi prius.

Breve fi non omnes, &c.

The special Verdict. 128

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Lincoln' que quidem tenementa cum pertinen' Surrender, funt & per totum tempus pred' fuerunt tenes &c... menta \* custumar' manerii pred' & sunt & per \* That the totum tempus peed' fuerunt bimiffa & bimif. Lands in sibilia per copiam rotulozum curie manerii il Question lius per Dominum ejustem manerit per se hold. vel seneschallum suum ejusdem manerii p20 tempoze eriften' cuicunque persone vel quibuscunque personis ea capere volenti vel vos lentibus in feodo limplici vel aliter ad voluntatem suam secundum consuetud' manern paco Duodque quidam Johan Smithson clericus 16 Of which Die Octob' anno regni Dom' Caroli secundi nu: John Smithper Regis Angliæ 34 fuit seisitus de eisdem son was seised tenementis cum pertinen' in dominico suo ut in Fee. De feodo ad voluntatem Domini manerii predict' secundum consuetudinem manerii illius per copiam rotulozum curie dicti manerii libi & hes redibus suis secundum cons' ejusdem maner' And furren-inde concess' Et sic inde feist existen' ad dered the cur' manerii illius adtunc & ibidan tent' fur fame to the fum reddidit in manus prehonorabilis Johannis Use of him-Comitis Exon' tunc & adhuc Domini manerii felfand Marillius eadem tenementa cum pertinen' ad us garet his funt dict Johannis Smithson & Margaretæ tunc Wife for ur' ejus pro termino vitarum suarum & vite Life, and to eogum diutius viventis & post eogum decessum the Survivor. ad ulum talis persone & talium personarum And afterp20 tali usu & talibus ulibus quales in ultima wards to the believes & testaments insign Johannis Smithson Use of such voluntate & testamento ipsius Johannis Smithson Person as he confect' vel conficiend' veclarat' sunt vel erint should by his t pro defectu talis declarationis tunc ad ulum last Will deredt heredis iplius Johannis Smithson Et juras clare. tozes pred' super sacr'um suum predict ultes The Testarius dicunt quod idem Johan' Smithson adtunt tor seised of fuit seilitus de residuo tenementozum in nare the Residue ratione infrascript' interius mentionat' cum in Fee-simpertinen' in dominico suo ut de feodo Duod, ple, and had que pred' Johan' Smithson habuit exitum de cor: Iffue Foanne poze suo procreatum Johannam Smithson filiam his only fuam que quidem Johanna cepit in birum quen: Daughter, dam Andream Smith qui quidem Andreas & Jo- who married hanna habuerunt eritum de cozpozibus suis pro- Andr. Smith, by whom she ereatum Johannem Smith quodque dia Johan- had Issue K 4 na John Smith.

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Surrender, in the Lifetime of her Father, and of Fo. Smith her Son. That Fohn Smith fon the his Will. at large in 795.

\* This was only a Charge in fcent, and not by Purchase. Margaret his predict' Margaretæ scilt' 10 Die Junii anno Do Widowenter-mint 1683 predict Johannes Smith in tenes and died. menta predict cum pertinen' intrabit & fuit And afterwards the Said Fohn Smith died without Iffue.

na obiit in vita Johan' Smithson patris sui pred' ac in vita pred' Johan' Smith silit ejusdem Jo-And fhe died hanna Et juratozes pzed' fuper facr'um fuum vzed' ulterius dicunt quod vzed' Johannes Smithson de omnibus & lingulis tenementis pzed' in fozma pzed' seilit' existen' ante pzed' tempus quo, ec. feilt' 27 Die Martii anno Domini 1673 debito modo & secundum formam Catuti in tali calu edit' & probis' condidit testamentum Father made & ultimam boluntatem fuam in fcriptis fub manu & figillo fuis geren' dat' eisdent die & The Will is anno ult' mentionat' juratozibus predict' in evidenc' offens' cujus quidem testamenti tenoz 1 Lutw. Rep. seguitur in hec berba. Here the Will was set forth, by which he devised both the Copyhold and Freehold to his Wife for Life, and after her Decease, fix Acres of the Copyhold to the Vicar of Bicker for ever; and all the rest both Freehold and Cophold to his Heirs at Law, and his and their Heirs for ever \* charged with the Payment of 1001. et. Et polfea feilt' I die Equity, and Aprilis anno Dom' 1683 pred' Johan' Smithson made no Al- De omnibus premiffs cum pertinen' in forma teration as to predicta feillt eriften' + obiit post cujus quis the Estate in dem moztem scilt' i die Maii anno Dom' 1683 the Land, so supradici predicta Margareta in tenementa presthat the Heir dicta cum pertinentiis intravit birtute telfatook by De- menti predict & fuit inde feisita & obiit 20 die ejustem menlis Maii anno 1683 Et juratos res predid' ulterius super face um suum dicunt The Testa- quod predict' Johan' Smith filtus pred' Andrea tor died fei- tempoze moztis ejustem Johannis Smithson fuit fed, &c. And beres Did' Johan' Smithson & post moztem

\* Fohn Smith inde feilit' prout ler postulat & sic inde feisit' Heir at Law existen' predict' Johannes Smith postea scilt' 28 to the Testa- die Maii anno Dom' 1686 obiit fine aliquo tor entered. exit' de corpore suo excun' e juratores prod' super sacr'um suum predict' ulterius dic' quod post mortem predict' Johan' Smith scilt' 20 die Junii anno Dom' 1686 predict' infranoz

minat Franc'us Smith modo pefendens ut cons

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fanguin' & por' heres ejustem Johan' Smith \* Surrender, rangum & prox heres ejusdem Johan' Smith \* Surrender, ex parte patris sui pred' scilt ut frater & heres you that the pred' Andrex Smith patris pred' Johan' Smith Lands were in tenementa pred' cum pertin' intradit & fuit inde seisit' prout lex postulat quodque inscano dered.

minata † Martha uror infranominati Theoph' \* That Fran, Joyner & Maria uror infranominati Har' Cason Smith the sunt prox' heredes predict' Johan' Smith ex Desendant is parte pred' Joannx matris ipsus Johan' Smith next Heir on scilt' stile Walteri Smithson fratris pred' Johan' the Father's Smithson Et ulterius dicunt quod idem Harry side to John & Maria Theophilus & Martha uror eine nost Smith, who Maria Theophilus & Martha uroz ejus post Smith, who mogtem pred' Johan' Smith in omnia & figula entered after ten'ta predict' cum pertinen' in & super posses, the Death of sion' dict Franc' Smith in jure presat Marix & folian's of Martha intraderunt & supernit inde seisit preut the Plaintist ler poffulat & fic inde feifit eriften tidem Heirs by the Harry & Maria ur' eius & Theophilus & Martha Mother's ur' eius postea scilt' 10 die Jan' anno regni side to John Dom' Reg' nunc nono infrascript' demiserunt Smith, who eadem tenementa cum pertinen' infranomis entered asier nat' Jacobo Clerke pro termino annozum in the Death of framentionat' birtute cuius bimiffonis idem Fohn Smith, Jacob' Clerke in ten'ta pred' cum pertin' intravit who demised t fuit possessionat' quousq; pred' Fran' Smith the same to in tenementa predict' cum pertin' in & super Clerke the pessession' ipsus Jacobi intradit & ipsum Jacobi pessession in a firma sua predicta ejecit modo & sorma and was possession intering inde queritur. Of and was possession intering inde queritur. preut pred Jacobus interius inde queritur Et feffed until li super totam materiam per juratozes paedic the Defenin forma pred' compertum bibebitur jufticiar' dant Francis Dom' Reg' hic quod paed' Franc'us eft culpa: Smith enterbilis de transgrestione & ejectione pred' in nar; ed upon him ratione predicta mentionat' tunc jur' pred' fus and ejected per facr'um fuum predict' dicunt quod predict' him. Franc'us est culpabilis, ec.

And fo made a general

Conclusion.

could determine a suraba old scottos to time persona tos And after here lace un fuum pacette alterius oue Queb-

### (37.) Simpson versus Tellwright.

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Surrender and Admittance, and afterwards See the Report of this Case in Tit. Way, pl. 1.

Confess the Leafe.

within the Manor of Tonftall.

And Copyhold.

N Replevin the Defendant made Conusance as Bailiff to Jane Ball, who was seised in Fee of the Place where, &c. and took the Gelding Dathe Copyhold mage feafant; the Plaintiff pleads in Bar, that extinguished. Robert Sneyd was seised of the Manor, Gc. and of Limefeild, Parcel of the Manor in which there was a Coal-mine, which he granted to one Burslem with Liberty to dig for Ninety-nine Years, and to

have a Way, Oc.

The Defendant confessed the Seisin and Lease, &c. sed idem Johannes Alicia & Johanna ulterius dicunt quod ad & ante tempus dimissonis pred & poftea ufque tempus feofimenti bic poftea specificat' fad' Sam' Tellwright anno regni bidi Domini Jacobi paimi nuper Regis Angliæ 17 But the hic postea mentionat' & a tempoze cujus con-Lands were trarii memozia homin' tunc non existebat suerunt infra manerium de Tonstall in com' Stafford & parcell' inde unum messuagium unum cottagium & 32 acre terre cum pertin' unde pred locus in quo, ec. a toto tempore supras dido fuit & adhuc est parcell' quodque pzedia' messuagium cottagium & 32 acre terre a toto tempore supradicto usque, &c. fuerunt tenemens ta custumaria manerii de Tonstall in com' Stafford at dimilla & diminibilia per copiam ro tulozum curie manerii per Dominum manerii illius per seneschallum suum curie manerii illius pro tempore existen' cuicunque persone vel quibuscunque personis ea capere volenti vel vos lentibus in feodo limplici vel aliter ad voluntatem Domini secundum consuetudinem manerii illius Et iidem Johannes Alicia & Johanna ulterius dicunt quod din ante pred' dimissonem prefat' Will'o Burslem per pred' Rad'um Sneyd superius fieri supposit' scilt' 18 die Apr' anno regnt as of

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d 0 regni Domine Elizabetha, etc. nono quidam & Surrender Will' Sneyd Diles feisit' fuit De & in predicto and Admitmanerio de Tonstall pred' cum pertin' in com' tance, and Stafford pred' de quo quidem manerio predict' afterwards messuagium cottagium † 32 acre terre unde, the Copyhold ec. tunc f a toto tempoze supradino, fc. usque, \* That Sir ec. fuerunt ut prefertur parcell' in dominico Wm. Sneyd fuo ut de feodo & sic inde feisit' existen' idem was Lord of Will'us Sneyd pred' 18 Die Aprilis anne regnt the faid Ma-Domine Elizabethæ nuper Regine Anglia, &c. nor. nono ad curiam iplius Will'i Sneyd tent' arud Tonstall infra manerium illud per quendam Johan' Sneyd abtunc seneschallum suum curie manerii illius per copiam rotulozum curie ejus= dem manerii concesst predict melluagium cots tagium & 32 acras terre unde pzed' locus in quo, ec. fuit parcell' cuidam Thoma Tellwright who at fuch fratri & heredi Edw' Tellwright habend' & tenend' a Court made eidem Tho Tellwright hered & affignatis fuis in a Grant of vervetuum ab voluntat' Dom' fecund' consuetud' the Copyhold manerii ill' Mirtute cujus concession' idem Tho' to T. T. Tellwright in tenementa pred' cum pertin' unde, ac. intravit & fuit inde seisitus in dominico fuo ut de feodo ad boluntatem Dom' fecundum consuetud' manerii ill' Et iidem Johannes Alicia & Johanna ulterius dicunt quod paed' Thomas Tellwright fic inde feisitus existens postea scilt' 10 die Octob' anno regni dicti nuper Regis Jacobi primi 15 ad curiam iplius Will'i Sneyd who furrentent' apud Tonstall infra maner' illud cozam dered to the Johanne Sneyd abtunc seneschallo curie illius Use of S. T. furfum reddidit tenementa cum pertin' unde, ec. in manus Domini manerii ill' secundum consuetudinem ejusdem manerii ad ulum Samuelis Tellwright filit & heredis apparen' pre= fat' Thomæ Tellwright hered' & affignatozum fuozum qui quidem Dominus manerii ili' ad curiam pred' ultimo mentionat' per feneschals lum luum pred' per copiam rotulogum curie ejustem manerii ipfum Samuelem at teneniens who was adta pred' cum pertin' unde, etc. admilit & cons mitted. ceffit tenementa pzed' cum pertin' unde, ec. eidem Samueli habend' & tenend' eidem Samueli hered' & affignatis in perpetuum ad volun-

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Surrender tance, and

tatem Domini secundum cons' manerii iff' Mir. and Admit- tute cuius concessionis ved' Samuel in tenes menta predicta cum pertin' unde, &c. intrabit the Copyhold & fuit inde feisitus in dominico suo ut de fes extinguished on ad voluntatem Domini secundum consuetudinem manerii illius Ipsoque Samuele fic inde seist' existen' predicteque Will'o Sneyd de mas nerio vzed' cum pertin' unde. Ac. ut vzefertur seist' eristen' pred' Will'us Sneyd ante bimission' prefato Will'o Burslem ut prefertur fieri supposit' fac' scilt' secundo die Julii anno regni dicti nuper Regis Jacobi primi 17 supradici apud Tonstall pred' de manerio predicto cum \* Feoffment pertin' \* infeoffabit paefat' Rad'um Sneyd fen' habend' & tenend' manerium pred' cum pertin' without any eidem Rad'o & heredibus fuis in perpetum Mirs Consideration tute cujus feoffmenti pred' Rad'us in maneris inde feilit' in dominico suo ut de feodo pres vidoque Rad'o de manerio pred' unde, ac. ut prefertur feilit' existen' ac pred' Samuel' de tes nementis pred' cum pertin' unde, ac. fecundum cons' manerii pred' ut prefertur feisit' eriften' idem Radus postea & post dimissionem per ips fum Rad'um bicto Will's Burllem fiert fuppos lit' fac' & din ante predict' tempus quo, &c. feilt 17 die Augusti anno regni Domini Jacobi primi nuper Regis Anglie 17 supradicto apud Tunffall paed' per quandam indent inter ipfum Rad'um Sneyd fen' & Rad'um Sneyd jun' er una parte & prefat' Sam' Tellwright filium & hered' apparen' Tho' Tellwright be Sneyd in com' Staff' geoman er altera parte fad' cujus quidem ins denture alteram partem figillo predict' Rad'i figillat' tidem Johannes Alicia & Johanna hic in curia proferunt cujus dat' eft eisdem die & anno pred' Rad'us & Rad'us per eandem indens turam infeoffaverunt pred' Samuelem De tenes mentis pzedia' cum pertin' unde, ac. + Babend' a tenend' tenementa predid' cum pertin' unde, ac. eidem Samueli & heredibus fuis in perpet' without any Mirtute cujus quidem feoffamen' ulterius mentionat' fatus custumar' in tenementis predict' cum pertin' unde, ac. ut prefertur de manerio

pleaded

† Another Feoffment pleaded Confideration.

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predict' per copiam rotulozum curie manerii Surrender predict' tent' ac ante tunc dimiss' & dimissibil' and Admitut prefertur emerlus fuit ac predict' Samuel De tance, and eisdem tenementis cum pertin' unde, fc. fei Extinguiftfit fuit in dominico suo ut de secodo & sic in ment of a copyhold. De seister existen idem Samuel postea scilt i die By which the Mail anno Domini 1661 apud Tunstall pred Copyhold obiit post cujus mortem ten'ta predict cum was extinst. pertin' unde, &c. descendebant cuidam Johan' Sam. Tell-Tellwright filio & hered' predict' Samuel per wright died. quod idem Johannes in ten'ta pred' cum per. The Premiftin' unde, etc. intravit & fuit inde seist in ses descended dominico suo ut de feodo & sic inde seisit' exis to his Son ften' ibem Johan' Tellwright pollea & ante pae: Fohn, Did' tempus quo, et. scilt' 18 Die Octobris ans who made a no 1695 de eisdem ten'tis cum pertin' unde, Feoffment to ec. feoffavit predict' Janam Ball habend' eidem Fane Ball. Janæ & hered' fuis in perpet' Mirtute cujus feoffamenti eadem Jana in ten'ta pzedict' cum pertin' intravit & fuit & adhuc eft inde feilita in dominico suo ut de feodo Et iidem Johan' Alicia & Johanna ulterius bicunt quod tempoze dimiffionis predict' prefato Will'o Burslem ut prefertur fact seu ad aliquod tempus tunc pe-terit predict minera carbonum in pred clau-so vocat le Limeseild non suit nec suisset aperta nec ulli carbones er eadem minera in eodem clauso effost fuerunt nec fuillent nec ulla bia a predict' clauso vocat' le Limefeild seu aliqua parte inde, &c.

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Cale of Crowther and Oldfeild.

Way. See the (38) Declaration in Detinue for Goods, &c. the Defendant pleaded, that the Goods were waived; the Plaintiff replies, that the Felon was taken upon a fresh Pursuit, and traversed, that he waived the Goods.

Waived Goods.

Trover.

Norfolk, ff. R Ic'us Oliver nuper de, &c. sum-W. H. quod reddat et bona & catalla ad bas lentiam 40 l. que ei injuste detinet, &c. & un-De idem Will'us per L. R. attoan' fuum dicit quod eum ipfe 15 die Febr' anno regni, ac. apud B. in com' pred' polleffonat' fuit be catallis videlt' de tribus peciis panni lanei Anglice three Remnants of broad Cloath ad valentis am 40 l. ut de bonis & catallis suis propriis & fic inde postessionat' eristen' catalla illa extra manus & polleffon' fuas cafualiter amisit que quident cafalla poltea feilt' I die Maii anne, ac. supradice ad manus & postession' ipsius Rici per inventionem devenerunt & adhuc in manu bus & postesson' iplius Ric'i eriffunt per quod acto accrevit eidem Will'o ad erigend' & habend' de eodem Ric'o catalla pred' idem tamen Ric'us licet sepius requisit' catalla pred' eidem Will'o nondum deliverabit sed illa ei hucusque reddere reculabit & adhuc reculat ac injuste detinet unde dicit quod deteriozat est & damp num habet ad valentiam 50 l. & inde produc eit fedam, gc.

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Et pred' Ric'us per W. W. attorn' suum ben' Waived & befend' bim & injur' fuam quando, &c. & Dis Goods. cit quod quidam Will'us Dixie est & pred' 15 Bar for that die Februarii in narratione pred' Will'i superis the Defenus specificat' fuit seiut' de manerio de D. cum dant took the Goods as pertin' in com' predict in dominico suo ut de Waif. feodo Idemque Will' Dixie & omnes illi quo That Wm. rum Statum ibem Will' Dixie modo habet & Dixie was pred' 15 die Feb' habuit in manerio pred' cum Lord of the pertinen' & a tempoze cujus contrar' memozia Manor of D. hominum non existit habuerunt & habere cons &c. sueverunt visum fran' pleg' in villa de D. And prescripred' & omnia al' que ad visum fran' pleg' per; bed to have a tin' in D. pred' ut bona & catalla waviat' & Court-Leet, ertrahuras infra pred' maner' Ct ibem Ric'us &c. Oliver ulterius dicit quod quidam homo igno, and Waifs tus ante pred' 15 diem Februarii scilt' 13 diem and Estrays, Februarii anno, ec. supradicto ut felo Domini That a Fe-Regis nunc catalla pred' apud B. extra pol lon unknown festion' pred' Will'i H. felonice furat' fuit ac tole the eadem catalla abinde usque D. pred' asportabit Goods from & postea scilt' pred' 15 Die Febr' anno, &c. fue the Plaintiff. pradicto pred' homo ignotus bona & catalla illa And left pred' apud D. pred' infra manerium pred' res them within liquit & Waiviavit per quod idem Ri'cus ut the Manor ballibus pred' Will'i Dixie manerii sui predict of D. &c. eodem 15 die Februarii apud D. pred' catalla Whereupon eodem 15 die Februarii apud D. pred tatalia the Defen-pred in forma pred Waiviat ad usum pred the Defen-Will'i Dixie cepit & seistoit ac eadem catalia liss to the ad usum pred Will'i Dixie adhuc detinet prout Lord of the ei bene licuit & hoc, &c. unde petit judicium Manor feifi pred' Will'us H. actionem fuam pred' berfus fed them to prefat' Ric'um habere debeat & pred' Will'us his Ufe. H. dicit quod iple ab action' sua pred' versus Replication. prefat' Ric'um precludi non debet quia protes Protestando, Stando quod pred' Will'us Dixie pred' 15 die that William Febr' non fuit feisit' de manerio pred' cum per Dixie was not tinen' in dominico suo ut de feodo protestando Lord of the etiam quot pred' Will' Dixie ac omnes illi Manor, and quozum fatum ille modo habet & pred' 15 Febr' that he had habuit in manerio pred' cum pertinen' a tem no Leer. poze cuius contrarium memozia hominum non eristit non habuerunt nec habere consuever' visum fran' pleg' in pred' villa de D. ac omnia illa

Waived Goods. Nor waived Goods. That Fobn Archer Stole the Goods from the Plaintiff.

who was

who was indiffed at the Seffions for this Felony.

Not guilty.

found him

illa que ad visum fran' pleg' pertinent nec bona e catalla Waiviat' e extrahuras infra mas nerium pred' prout pred Ric'us superius alles gavit & p20 placito vicit quod quidam Johan' Archer p2ed' 13 die Febr' anno, &c. supradicto ut felo vicit Dom' Reg' nunc apud D. p2ed' bona & catalla p2edict extra possession' ipsius Will'i H. felonice furat' fuit posteaque scut' nzed' is die Febr' anno, ec. supradicto predict' Johan' Archer ad recentem insecutionem ipsius Will'i H. captus fuit & postea ad sessonem pataken upon a cis Dom' Reg' tentam apud G. in com' ped' fresh Purfuit, Die Martis bibelt' 12 Die Martii anna, ec. co ram H. Domino C. & aliis justiciar' Didi Dom' Reg' ad pacem necnon ad diversas felen' transgr' & alia malesada in com' pred' perspetrat' audiend' & terminand' affign' pred' johannes per nomen Johan' Archer De W. in com' pred' Piftor indidatus fuit de felonia pred' bidelt' de eo quod iple 15 die Febr' anno, ec. supradico avud de pred' vi & armis viginti virgas panni lanei vocat' Broad Cloath & alia bona ad valenciam 20 1. de bonis & catallis iplius Will'i H. adtunc & ibidem invent' felonice cepit & aspoztavit contra pacem didi Dom' Reg' cozonam & dignitatem fuas, &c. super quo pred' Johan' Archer ad eandem feffonem pacis tozam jufficiariis ped' per bic' com' pedia' And pleaded ibibem budus ab barram & allocutus qualiter fe belle de felonia pred' acquietari birit quot ipfe in nullo fuit culpabilis de premists et per indictamentum pred' in forma pred' impolitis & inde de bono & malo posuit se super patriam ob guod adtunc & ibident confideratum fuit per

inde jurata, ac. super quo juratozes inde impanellati adtunc & ibidem eradi benerunt qui And the Jury ad veritatem de premissis dicend' electi & tris ati birerunt fuper facr'um fuum quod predict' guilty of the Johan' Archer fuit culpabilis de felonia predict faid Felony. Et ibem Will'us H. ulterius Dicit quod pred' upon the E- Johan' Archer per juratozes predict' compertus vidence of tuit culpabilis de felonia pred' ratione evident tie per ipsum Will'um H. versus presatum Johan'

prefat' jufficiarios biai Dom' Reg' quod fieret

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adfunc & ibid' date per quod quodbam brebe Waived Dom' Regis a curia iplius Dom' Reg' coram Goods. prefat' jufficiar' Dom' Reg' tunc emanan' precept' fuit ballibo manerii pzed' quod bona e catalla pred' eidem Will'o H. restitueret & Deliberas Whereupon ret line dilatione periculo incumbente Et idem he had a Will'us H. ulterius dicit quod bona & catalla pzed' Writ of Rein indidamento pred' superius specificat' ac pred' fitution dicatalla ipfius Will' H. superius specificata funt rected to the parcell' bonozum & catallozum pred'in indicta, Bailiff of the mento pred' superius specificat ac etiam quod Manor, &. pred' Johan' Archer in indicamento pred' superius And made specificat' a pred' homo ignotus in barra pred the usual A-Ric'i fuperius fpecificat' funt una & eabem perfona & non alia neque diversa absque hoc quod pred' homo ignotus pred' bona e catalla infra maneris um pred' reliquit & Waiviavit prout pred' Ric'us superius allegabit & hoc paratus est verificare unde petit judicium & catalla pred' una cum dampnis suis occasione detentionis eczundem fibi adjudicari, ec.

Et pred' Ric'us ut prius dicit quod pred' homo ignotus pred' bona & catalla infca manerium pred' reliquit & Waiviavit prout ipse superius allegavit & de hoc pon' se super patriam & predict'

Will'us H. similiter Ideo, ec.

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(39.) The Plaintiff declared in Trespass for taking a Horse; the Defendant pleaded in Bar as followeth.

f. E predictus W. W. per L. R. attorn' fuum Estray.

benit & defend' vim & injuriam & quoad Plea in Bar, benire vi & armis seu quicquid contra pacem, &c. for that the dicit quod ipse non est culpabilis modo & forma Defendant prout pred' R. R. superius versus eum queritut took the & de hoc pred' W. W. ponit se super patriam, &c. Horse as an Estray.

Eftray.

a quead reliduum transgressionis pred' per prefat W. W. superius fieri suppolitum ibem W. W. dicit quot pred' R. R. actionem fuam pred' berfus vzefat W.W. habere non bebet quia bicit quod ante pred' tempus quo supponitur transgreiko pred fieri & codem tempore quo transaressio pred furponitur fieri iplemet fuit feilitus de manerio

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nor of H.

That the De- de H. cum pertin' in comitatu pred' ut de feodo fendant was quodoue ibem W. W. ac anteceffozes fui & oms seised in Fee nes illi quozum fatum ibem W. modo habet & of the Ma- pzed' tempoze quo transgresso pzed' superius fieri supponitur habuit in manerio pecd cum pertin'

them.

That the ftray,

and was and then proclaimed in the next Market-Towns, on Market-Days,

and was owned by N. P. and

That What Week Sakeres the Book was

a tempoze cuius contrarium memozia hominum non existit habuerunt & habere consueverunt om And preseri- mimodas extraburas benientes infra precindum bed to have manerii pred' & easdem extrahuras feisiverunt & Estrayswith-sciffre consueverunt a toto tempoze suprad' & idem in the Manor. W. W. Dicit quod ped' equus ante ped' tempus And to feife aus furvonitur transgreffio pzed' fieri fuit ertrahur' & veniebat infra precindum manerii illius per qued ibem W. W. eodem tempoze quo tranfg' Horse came pred' superius fieri supponitur equum pred' infra into the Ma-manerium pred' in quodam clauso bocat' S. parnor as an E-cell' dici manerii invent' ut extrabur' feilibit & ad cous & ulum proprium cultodivit Et polten fecundum cons' in regno Magnæ Britanniæ ulitat' there feifed, proclamationes inde fecit in villis mercatoriis pror' eidem manerio adjacen' videlt' in villis mercatoziis de F. & W. per duos dies mercatozios videlt' in villa de F. Die fabbati tunc paor' fequenti t in villa de W. die Mercurii pzor fequen' qui autoem dies fabbati est dies mercatozius in villa de F. pred' & pred' dies Bercurius eft dies merca-torius in villa de W. pred' infra ann' & diem post tempus illud quod fi aliquis beniret eidem W. W. ad clamandam proprietatem pred' equi fore fuam & cam probaret equum illum rehaberet prebido. offered to be que equo fic in forma pred' fecundum confuetus delivered to binem hactenus ulitat' in regno Magna Britannia him, but he proclamato quidam N. P. super proclamationes refused to illas veniebat e proprietatem ejustem equi clastake the said mabat e pred' W. W. eodem tempore quo, ec. equirm vzed' aprid H. pzed' obtulit eidem N. P. ad

deliberand' sed pred' N. P. equum illum de pres Estray. fat' W. W. recipere adtunc & ibidem penitus res

cufabit & hoc paratus eft berificare, &c.

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Ot predict R. R. dicit quod ipfe per aliqua per Replication. prefat' W. W. superius placitando allegat' ab actis De injuria fua one fua pred' inde berfus pred' W. W. precludi protria. nort bebet quia dicit quod pzed' W. W. die & anno supradictis in narratione pred' superius specifis cata de injuria sua propria pred' equum ipsius R. pacem vini Domini Kegis nunc prout ipse supes rius versus eum queritur & hoc petit quod inquiratur per patriam, &c.

### (40.) Eastcourt versus Weeks.

IN Ejectment upon Not guilty pleaded, there Waste, &c. was a special Verdict sound at the Assiss at Sa- Forseiture lisbury, (viz.) Juratozes dicunt super sacramens for it, Witum suum qued tenementa in narratione infeas dow's Efface fcripta mentionat' funt & femper fuerunt tenes pleaded, &c. menta cultumaria & parcell' manerii de Newnton See the Rein com' Wilts De quo quidem manerio quidam port of this Will'us Eastcourt miles fuit seisitus in dominico Case in Tit. sub ut de seodo quodque quidam Will'us Wecks Forfeiture. fuit seilltus de eisdem tenementis custumariis That the (K) pl. 12. pro termino vite sue naturalis per copiam rotus Lands were lozum curie manerii illius ad voluntatem Domini Copyhold, secundum cons' manerii illius conemque Willio and that Sir Weeks De eisdem ten'tis cultumar' fic feilit' eris Wm. Eafteours ften' ipfe pred Will'us Weeks cepit in urozem was Lord of fuam quandam Elizabetham Kite at postea prefas the Manor, ut prefertur seistus post enjus mortem manerie That Wm.
ut prefertur seistus post enjus mortem manerie That Wm.
um illud descendit ruidam Amiciæ Eastcourt & seed of the
insta nominate Annæ Eastcourt ut sozoribus & Copyhold
heredibus ipsins Will'i Eastcourt quodque postea for Life. tus Will'us Eaftcourt obiit de manerio pred' fic &c. scitt' pred' \* Will'us Weeks permilit meffuagium And married El. Kite, who afterwards claimed her Widow's Estate. Sir Wm. Eastcourt died, and the Premisses descended to Amicia and Anne Eastcourt his Sifters and Heirs. \* That Wm. Weeks suffered the House to be out of Repair.

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That Win. fo for ten and Coheirs died. That her scended to Anne, who seised. That Wm. Weeks died Copyhold Tenements. Custom for any Copyholder died after Christhold it till

Wafte, &c. infra mentionatum foze ruinolum irreparatum & in decalu pro defectu necellarie reparationis inde Weeks 25 Nov. anodaue postea scilt' 25 die Novemb' anno Dom' 1690, madea 1690 predict Will'us Weeks per quodam fadum Leafe of this fuum juratozibus pzed' in evidentits oftenfum Dis Copyhold to misst omnia pred tenementa custumaria cuidam Ed. Brown for Edwardo Brown habend' a tenend eidem Edwardo Brown a festo Sand' Mich'is tune ult' preterito Years, if Wm. p20 & durante termino unius anni extunc p20p' Weeks fould lequen' & fic De anno in ann' p20 termino Decem fo long live. annount critine pacr' fequen' fi paed' Will'us Nota, This Weeks tam din vivere contingeret sub annuali Lease was not redditu 10 1. eidem Will'o Weeks proinde solvend warrantedby quodque postea prefat' Amicia Eastcourt obitt set the Custom sita de medictate manerii pred'in dominico suo of the Manor. ut De feodo volt cuius moztem eadem medietas That Amicia Descendit prefat' Annæ Eastcourt ut sozozi & heredi Eastcourt, one ipsius Amiciæ per quod pred' Anna Eastcourt suit of the Sisters adhuc existit sola seisita de manerio pred' in dos minico suo ut de feodo quodque postea scilt' i die Febr' anno Domini 1696 prefat' Will'us Weeks Moiety de- obiit de tent'is pred' cultumariis lie ut prefertur feilitus Duodque infra manerium pzed'eft & has betur a a tempoze cuius contrarium memozia hos was now fole minum non existit fuit & babebatur quedam consuetudo usitata a approbata quod uror cujusdem tenentis custumarii qui obiit seisit de aliquibus tenementis cultumar' parcell' ejusdem manerit seised of the de statu inde pao termino vite sue habere & tenere consuevit & habere & tenere debuit omnia huius modi tenementa cuffumaria unde eius bir fic the Wife to obiit feisit' pro & durante viduitate sua ad volun-have her Wi- tatem Dom' manerii illius pred' pro tempore exis dow's Eftate. ften' fecundum confuetudinem ejufdem manerii ac And that if etiam quod executor & administrator enjusibet tas lis tenentis cullumar' obientis de tali statu ut prefert scilit' de a in aliquibus ten'tis custumar' parcell' manerii pred' ad aliquod tempus polt fer mas, and be- ftum Natalis Dom noftri & ante festum Annunfore Lady Day ciationis beate Virginis habere & tenere consuebes then his Executor should runt & habere & tenere Debuerunt omnia hujus modi tenementa cultumar' ulque fettum Sandi Mich follow Mich'is Arch'i paor' post mogtem hujusmodi tes nentis custumarii sic obiunt' feilit' & non dintius quodque pott separal' moztes predic Will'i Eaft-

court Amiciæ Eastcourt & Will'i Weeks at ante Waste, &c. festum Sandi Mich'is Arch'i paor post mogtem Forfciture Dicti Will' Weeks videlt' 24 Die Sept' anno Domis for it, Wini 1697 infra nominat' Anna Eastcourt Dimisoz dow's Estate querentis intravit in & super omnia dida tenes pleaded. menta custumaria clamando illa quatenus forisfact' eidem Annæ ut Dom' manerii pred' & fuit Lessor of the De eisdem tenementis cultumariis feilit' pacut ler Plaintiff enpostulat' Duodque messuagium pred' fic ut pres tered for a fertur irreparat' existen' continuebat sic irrepas Forfeiture. rat a in decasu pro defeau necessar reparationis That the inde quousque & ad didum tempus intrationis House was per prefat' Annam Eastcourt ut prefertur faste then out of Ac juratozes pred' ulterius fuper facr'um fuum Repair, and pred' vicunt quod didum melluagium modo eff & fo continued per spatium unius mensis ult' preferitum suit at her Entry. bene & suscienter reparat' ad onera & custagia But that 'ris neest' Eliz' que suit uron dict Will' Weeks town, now, and was pzefat' Eliz' que fuit uroz Didi Will'i Weeks temp' mostis sue quodque post intrationem pred'sic ut past well re-preservur sadam videlt' infrascript' 19 die Jan' paired by anno regni Dom' Reg' nunc 9 pred' Anna East- the Widow. court dimilit tenementa cultumar' pred' prefato That Anne infranominat' Johanni Eastcourt habend' & tenend' Eastcourt deeibent Johanni ab ultimo die Decemb' tunc ult' miled the preterito pro termino 7 annoquim extunc prop' Premisses to lequen' Mirtute cujus quidem dimifionis idem the Plaintiff. Iohan' Eastcourt in eadem tenementa custumar' intravit & fuit inde pollessonat' quousque infras nominat' Alicia Weeks ut serviens prefate Eliz' Weeks que fuit uroz Didi Will'i Weeks & per ejus special' preceptum in tenementa custumaria pres dida in a super possessionem ipsius Johannis inde intravit e ipsum a firma sua pred' inde ejecit expulit a amobit modo a forma prout idem lohan' Eastcourt interius narrabit Ac jurat' pred' funer facr'um fuum pred ulterius dicunt quod pred Elizabetha que fuit uroz dicti Will' Weeks tempoze moztis sue adduc est e continue a tems poze moztis bidi Will'i Weeks bucufque fuit & remantit vidua minime nupta e in plena vita, ec. and made a general Conclution. Michie Archi prov pole morem infinimon te-

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### (41.) Simpson versus Bythwood.

país, coc. See the Report of this Cafe in Titulo Wreck, pl. 2.

Wreck, Tref. Suffex, fl. C'Torer Bythwood nuper de East-Dean In com' pred' yeoman attach' fuit ad respondendum Jacobo Simpson de placito quare vi & armis bona & catalia ipuus Jacobi ad valens tiam 40 1, apud Eaft-Dean inventa cepit & aspoztavit e alia enormia ei intulit ad grave damps num iplius Jacobi & contra pacem Dom' Reg' nunc, ec. Et unde ibem Jacobus per Thomam Isted attorn' suum queritur quod pred' Storer 28 Die Dec' anno regni dicti Dom' Reg' nunc 34 bi & armis videlt' gladiis baculis & cultellis bona & catalla vivelt' Unam Anchor' & un' funem Anchorarium Anglice a Cable ipsius Jacobi ad valentis am, ac. apud East-Dean pred' invent' cepit & aspoztavit a alia enozmia ei intulit ad grave dam= num, fc. & contra pacem, &c. unde dicit quod deteriozat' est & damnum habet ad valenciam 50 l. & inde producit fectam, &c.

Et pzed' Storer Bythwood per Johannem Purfeild attoan' fuum benit & defend vim & injuris am quando, &c. & quoad benire bi & armis feu quicquid quod est contra pacem Dom' Keg' nunc,

That Wm. Ben. Took were Lords of the Manor of Burling, lies in East-Dean next the Sea.

Ac. Idem Storer dicit quod ipse non est culpabilis & de hot pon' se super patriam & pred Jacob Simpfon similiter, &c. Et quoad residuum transgr Plea in Bar. paed' superius fieri supposit' idem Storer dicit quod pred' acobus actionem suam pred inde berfus eum babere non bebet quia Dic' quod quidam Will' Wharton & Benjamin Took din ante pred' Wbarton and tempus quo supponitur transgreffio pred' fieri & predicto tempore quo, ec. seiliti fuerunt & adhuc seiliti cristunt de a in manerio de Burling cum pertin' in com' Suffex pred' in dominico suo ut de whichManor feodo quod quidem maner' jacet in Eaft-Dean pred' in com' pred' & se extendit & contigue adjacet ad altum mare ubi mare per cursum sunm pro tempore fluit a refluit a a tempore cujus contrarii memozia hominum con existit fluxit & reflurit a pred Sto' Bythwood ulterius dicit quod infra

infra maner' pred' talis habetur necnon a tempo: Wreck, &c. re cujus contrar' memozia hominum non eriftit the Defenhabebatur consuetudo vivelt' quod quilibet Do, dant juftifies minus manerii pzed pzo' tempoze eriften' a toto for Wreck. tempoze supradicto solebat & usus fuit curare Custom of Anglice to take Care tam de sanatione omnium nor, that the personarum egrotarum e de sepultura omnium Lords thereperson' moztuarum qui extra aliquam navem of usually naufrag' super terram manerii predict' inter took Care of flur' & reflurum maris ibidem project' fue the Sick, and runt quam de conservatione bonogum & cas to bury the tallozum que extra tali naufrag' nabe fuper Dead caft on terr' maner' predic' inter flurum & reflurum Shore there. maris ibid' relia' fuerunt pro usu proprietar' And to preeozundem Ac in consideratione inde hujusmodi serve ship-Dom' manerii p2ed' p20 tempoze eristen' per to wrecktGoods tum tempus p2ed usus suit & consuevit seistre & of the Use ad usum suum p20p2ium habere Optimam An-And in Conchoram & optimum funem Anchorar Anglice the fideration Cable cuiuflibet navis que per tempeftatem bel thereof to al' extremitat' maris naufrad' fiterit Anglice was have the best Shipwreckt & Super terram manerit pred inter Anchor and flurum & reflurum maris impulfa & relicta fuer' Cable, of c-Ct \* pred' Storer ulterius dicit quod ante pred' very Ship tempus quo supponitur transgressio predicta fieri that was quebam nabis fuper altum mare prope predid wrecked, &c. manerium vehementer tempestate jactata \* nau \* And so he fracta fuit \* per tempestatem illam & al' extre justifies. mitates maris super terram manerii pzed' apud Ship was cast East-Dean pzed' inter surum & resur' maris ibis on Shore, Sa. dem cum anchoza & fune anchozar' pzedict' eidem by Stres of navi pertin' impulsa & ibidem relicta fuit per Weather at auod ped' Storer ut ballibus predictorum Will'i Eaft-Dean, & Benjamin' tune & abhuc Dom' manerit pzebid' with an Anut prefertur existen's per easum mandatum chor and nabem pred' fuper terrain manerit pred' apud Cable. Eaft-Dean pred' inter flurum & reflurum maris And thereibidem lie ut prefertur impulsam & ibidem relicts upon the Deam predicto tempore quo, ec. post reflurum fendant as maris ibidem intravit e predictam Anchoram Bailiff of the & funem Anchorar' predict' ejusdem navis in Lords of the

faid Manor. feised the same being the best Anchor and Cable of the said Ship, to the Use of the Lords of the Manor; by Virtue of the said

Custom.

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Wreck, Se. the Defenfor Wreck.

eadem nave adtunc & ibidem eriften' ut optis mant Anchoram & optimum funem Anchorar' eiusdant juftifies bem nabis cobem tempoze quo, ec. feilibit & ertra eandem navem cepit & aspoztavit ad usum pzedicozum Will'i & Benjamin' birtute confuetus binis pzed' prout et bene licuit Due quidem feisura captio & asportatio Anchora & funis Anchorar' pred' per predidum Storer in forma predida & er causa pred' fact' funt idem relibuum transgressionis pred' unde pred' Jacobus fuperius se modo queritur & hoc paratus est verificare unde petit judicium fi pzedict' Jacobus actionem fuam predict' inde berfus eum habere debeat, sc.

Autono Designe. Pleadolthe anny secures allacen

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## APPENDIX.

٨	CTIONS.  Acts of F	Vide Case,	Debt, To	espass,	&c.
	Acts of F	arliament n	ot extend	ing to	Copy.
	holds.			Page	1 to 9

Admissions of Infants by their Guardian.	2, 6
Proclamations for Admissions.	10
Forfeiture for refusing to be admit	ted. 8
Ad voluntatem Domini left out of the Plea	
	130
Affeering of Amerciaments.	18 22

Ale-tafter chosen. His Power to cut Butter, &c. pleaded 124 Amerciaments in a Court-Leet not to be affected by the Steward or Jury.

Not faying to what Sum, is ill. 18, 27 For digging Pits near the Highway, and leaving them open, Oc. For not appearing at the Leet, when fummoned. 19 For refusing to be sworn at a Leet. 30

And for a Contempt and Disturbance there. 30, 31

Ancient Demesne. Pleadable only in Curia Maneril.

Ancient

# A Table to the Appendix.

Ancient Demesne.  See Pleas. That the Manor is ancient De-
AND THE RESIDENCE OF THE PARTY
Pleaded in Ejectment.
So in Trespats, Gre,
Case for levying a Fine thereof (at Com-
Annuity. Grant thereof to a Steward for Life, with
Clause of Didness is in Anna
CARTER OF NO HORSTON TON TONIERS TO STOCK OF
and to diffrain. <b>B</b> with Confess of the vio-
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